Madras (Presidency) Laws, statutes, etc.

THE

JUDICIAL, REVENUE & AND MISCELLANEOUS CODE

Compilations

CONTAINING ALL THE UNREPEALED ENACTMENTS OF THE LOCAL AND IMPERIAL LEGISLATURES,

From 1802 *to* 31*st October* 1872,

IN FORCE IN THE MADRAS PRESIDENCY.

IN FOUR BOOKS.

BOOK I.

JUDICIAL—CIVIL.

COMPILED BY

S. SOMASOONDRUM CHETTY,

SECOND VERNACULAR CLERK OF THE CHENGLEPUT COLLECTOR'S OFFICE.

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PREFACE.

ALTHOUGH the Regulations and Acts relating to the Madras Presidency were some years ago collected and published up to the year 1861, yet a complete collection of the Unrepealed Enactments up to the present date, has not, to the best of the compiler's knowledge, been published since 1862, and the want of such a collection has long been a desideratum.

In this edition, are comprised all the enactments at present in force in this Presidency; but as the collection is too extensive to be contained in one volume, the work has of necessity been divided into as many convenient parts as the whole would admit of, and instead of printing them in the order of their promulgation without distinction of subjects, they have been arranged under the following special heads, viz:—

I.—JUDICIAL—CIVIL.

II.—JUDICIAL—CRIMINAL.

III.—REVENUE.

IV.—MISCELLANEOUS.

The above Classification has been adopted as being easier for reference and affording the reader the means of more easily following the course of Legislation in its several branches.

The several Rulings, &c., which should appear as Notes to some of the Civil Enactments have been added as an Appendix to BOOK I, JUDICIAL—CIVIL. These Notes have been revised and enlarged by M. R. Ry. PURGHEE TEROOMAL ROW GAROO, District Munsif in the Bellary District, to whom the compiler takes this opportunity of tendering his sincere thanks for the valuable assistance rendered to him.

Although great care and attention have been bestowed on this compilation with the view of rendering it as correct as possible, the Compiler yet does not claim for it an entire freedom from errors. Should any, however, be detected, the Compiler will be obliged by their being pointed out to him, to enable him to make the necessary emendations in future editions.

MADRAS,
November 1872.

S. S.

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BOOK I.

JUDICIAL—CIVIL.

A. D. 1802. REGULATION II.

A REGULATION, *for establishing and defining the jurisdiction of the Courts of Adawlut, or Courts of Judicature, for the trial of civil suits in the first instance, in the British Territories immediately subject to the Presidency of Fort St. George.*

Passed on the 1st of January 1802.

GREAT inconvenience having hitherto been experienced, from the administration of justice being vested in persons holding the situation of collector of the revenue, inasmuch as acts done in the one capacity came often to be reviewed and decided on, in the first instance, in the other; and that the said officers were otherwise disqualified for such judicial duties from the other calls of their office; the Governor in Council has therefore determined that the office of judge or magistrate, and collector of the revenue, shall in future be held by distinct persons; and that, for the better administration of justice, zillah courts shall be established in the several districts hereinafter named, under the provisions and rules laid down in this regulation. Preamble.

II. Repealed by (*Madras*) Act II. of 1869.

III to X. Repealed by Act X. of 1861.

XI. Repealed by (*Madras*) Act II. of 1869.

XII. The zillah courts are not to receive or entertain any suit, under any pretence whatever, relating to any land, house, tenement, or hereditament, nor a dispute regarding the boundaries of lands, houses, tenements, or hereditaments, Of what suits the zillah courts are prohibited taking cognizance as coming within the jurisdiction of the supreme court of judicature.

Sec. XII.—An action for land situated within the jurisdiction of a

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Limits of the supreme court.

situated within the town of Madras or the limits of the supreme court of judicature at Madras, which, for the purpose of this rule, is declared to be bounded as follows: That the southern limits shall be the southern bank of the Saint Thomé river, as far as the road leading to the Long Tank; that the limits shall then be continued in a northern direction, along the bank of the Long Tank, and from thence along the bank of Nungumbaukum Tank, as far as the village of Chettapet, upon the banks of the Poonamally river; that the limits shall be continued, in the same direction, to the villages of Kilpaukum and Peramboor, and that, from the latter village, it do take an eastern direction to the sea, so as to include the whole village of Tandearpetta; also that no lands, situated to the southward of the Saint Thomé river, or to the westward of the bank of the Long Tank, or of the Nungumbaukum Tank, shall be considered within the limits of the said town of Madras; but that all the lands included in the said villages of Chettapet, Kilpaukum, Peramboor, and Tandearpetta, shall be considered within the said limits. Nor shall the zillah courts entertain any suit whatever against a person who may be a resident of Madras, or of any place within the said limits, at the time the suit may be instituted. The courts are commanded not to intermeddle with or take cognizance of the suits abovementioned, which are to be considered entirely exempt from their jurisdiction.

Exceptions to the rule.

But the prohibitions contained in this section are not to be construed to extend to preclude the zillah courts entertaining any suit concerning any marriage, or caste, in which no money or other valuable thing may be demanded or decreed, although the cause of action shall have arisen, or the defendant may reside, or shall have resided at the time the suit commenced, within the limits of the supreme court.

Each zillah court to be superintended by one judge.

XIII. Each zillah court is to be superintended by one judge, who, previous to entering upon the execution of the duties of his office, shall take and subscribe the following oath before the Governor in Council, or any person whom he may commission to administer it.

Zillah Court, will lie to such Zillah Court, against the proprietor thereof, even though he be a resident of Madras.—*S. U. Pro.*, 19th *March* 1838. *D. Mad. Civ. Pro. p.* 231.

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Oath to be taken by the Judges of the zillah courts.

"I, A. B., appointed judge of the court of adawlut of the zillah of ( ) solemnly swear that I will administer justice conformably to the regulations that have been or may be passed by the Governor in Council, to the best of my ability, knowledge and judgment, without fear, favor, promise or hope of reward; that I will not receive directly or indirectly any present or nuzzer in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or has been decided in the court of which I am appointed judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly, any present or nuzzer in money or effects, from any party or person whomsoever, on account of any suit to be instituted or which may be depending or has been decided in the court; that I will render a true and faithful account of all sums of money that may be paid into the court or disbursed from it; that I will not be concerned, directly or indirectly, in the purchase of any goods or commodities in the British dominions, under the Presidency of Fort St. George, for the purpose of remitting money to Europe, nor in any commercial transactions; and that I will not derive, directly or indirectly, any emoluments or advantages from my station, excepting such as the orders of Government do or may authorize me to receive.

"So help me God."

Courts to be held in a large room three days in every week or oftener if necessary.

XIV. The zillah courts are to be held in a large and convenient room in the city or place at which they are respectively established, three days in every week, or oftener if the state of the business shall render it necessary. Whenever the judge of a zillah court, from indisposition or other causes, shall be prevented from holding a court three days in each week, as above required, he is at the expiration of

Judges to inform the sudder adawlut whenever they may be prevented holding a court as often as is herein required.

Sec. XIV.—1. Whenever a public officer labors under indisposition of such a nature as to prevent him from doing his duty, it is incumbent on him to report it, in order that he may be relieved and a fit provision made to render the court effective; but it is not sufficient to [illegible] *pro forma*, if the judge is unable to try causes.—[illegible]. 1833.

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the week to report the cause of the court not being so held to the sudder adawlut. This report is not to be made when the court may be shut pursuant to orders from the sudder adawlut under *Regulation III*, 1816. No rule, order, proceeding, or decree, shall be made, but on court days, and in open court. The zillah courts are to use a circular seal, one inch and three-quarters in diameter. The seals are to bear an inscription to the following effect, in the Persian character and language; and also in the character and language of the district:—"The seal of the court of adawlut of the zillah of ." The seal of each court is to remain in the custody of the judge.

No act to be done but on court days and in open court.

Seals of the courts.

Seals to remain in the custody of the judge.

XV. & XVI. Repealed by Act X. of 1861.

XVII. In cases coming within the jurisdiction of the zillah courts, for which no specific rule may exist, the judges are to act according to justice, equity, and good conscience.

Judges to act according to justice, equity, and good conscience in cases for which no specific rules exist.

XVIII. Repealed by (*Madras*) Act II. of 1869.

XIX to XXI. Repealed by Act X. of 1861.

XXII. Rescinded by Cl. 1, Sec. VI, Regulation XV of 1816.

XXIII. Repealed by (*Madras*) Act II. of 1869.

A. D. 1802. REGULATION III.

A REGULATION *for receiving, trying, and deciding suits or complaints, declared cognizable in the Courts of Adawlut established in the several Zillahs immediate subject to the Presidency of Fort St. George.*

Passed on the 1st of January 1802.

THE following rules are enacted for receiving, trying, and deciding suits or complaints declared cognizable in the courts of adawlut established in the several zillahs.

2. A judge cannot on account of indisposition be permitted to adjourn the court to his private residence.—*S. U. Pro., 11th Dec.* 1845.

3. Judicial and Revenue officers are not to make over charge of their offices on the ground of sickness, unless the necessity for the measure be duly certified by the Medical Officer of the station, whose certificate should always be forwarded direct to Government with the report of the temporary relinquishment of office.—*Ex. Min. Con., 9th June* 1854. *Rev. Dept. No.* 651. *C. O. B. R. 3rd July* 1854, *p.* 14.

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II. to VI. Repealed by Act X. of 1861.

VII. The first portion repealed by (*Madras*) Act II. of 1859.

The zillah courts are to administer to parties consenting to be examined on oath, and to witnesses, such oaths as may be considered most binding on their consciences according to their respective religious persuasions.

What oaths to be administered to parties or witnesses.

VIII. Repealed by Act XVII. of 1862.

IX. & X. Repealed by Act X. of 1861.

XI. *First.* That the quinquennial register of landed property paying revenue to Government may be kept complete, the zillah courts are strictly enjoined to transmit to the collector of the zillah, and the Board of Revenue, a copy of every decree that they may pass, or which may be sent to them, to be enforced by the *provincial court of appeal,* * or the sudder adawlut, † regarding any zemindary, independent talook, or other land paying revenue immediately to Government, or in any wise concerning the possession of such land. The judge is to transmit the copy of the decree within ten days after he may pass or receive it. The decree is to be attested with the signature of the judge and the seal of the court; and is to be accompanied with a short abstract of it, specifying the date of the decree, the name of the pergunnah or pergunnahs, the talook or talooks, the turf or turfs, the village or villages, or the portions of each, which may be decreed, the name or names of the person or persons last in possession, the person or persons to whom the lands may be decreed, and if the land be decreed to two or more persons, the shares awarded to each person.

Zillah courts to transmit to the Board of Revenue and the collector, a copy of every decree regarding land paying revenue to Government

What the abstract is to contain.

Second. The decrees regarding mulguzarry land to be transmitted, as above directed, to the collector of the zillah and to the Board of Revenue, are such decrees only as affect the proprietary right in, or possession of the land.

Of what particular decrees copies are to be so transmitted.

XII. to XV. Repealed by Act X. of 1861.

XVI. *First.* In suits regarding succession, inheritance, marriage, and caste, and all religious usages and institu-

By what law the suits herein described are to be decided.

* Abolished under Act VII of 1843. † High Court.

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tions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the judges are to form their decisions (*portion Repealed by Madras Act V of* 1867) ; but no reference is to be made by the judges to any individual not acting in a public and responsible capacity ; yet this shall not prohibit parties in a suit submitting law opinions, quoting or referring to authorities in support of their claim.

Executors to Mahomedans and others, not being disqualified landholders, may take charge of the estate of the deceased and proceed in execution of their trust, without any application to the officers of Government.

Second. In all cases of a (*rescinded as regards* a Hindoo *by Section II. Regulation. V. of* 1829,) Mussulman, or other person subject to the jurisdiction of the zillah courts, having, at his death, left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder subject to the superintendence of the court of wards, the executors so appointed are to take charge of the estate of the deceased and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to the judge of the court of adawlut, or any other officer of Government, for his sanction ; and the courts of justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust or otherwise ; when they are to take cognizance of such complaint, in common with all others of a civil nature (under the general rule contained in *Section V, Regulation II. of* 1802), [*repealed*] and proceed thereupon according to the Regulations ; *(portion Repealed by Madras Act V of* 1867*)* with respect to which the judge is to be guided by the law of the parties, subject to any modifications enacted by the Governor in Council in the form prescribed by *Regulation I of* 1802 *(repealed.)*

Courts of justice prohibited to interfere in such cases, except on a regular complaint.

To proceed on such complaint according to the regulations.

Heirs of persons dying intestate, entitled to succeed to the whole estate, or their guardians not required to apply to courts of justice for permission to take possession of the estate as far as can be done without violence.

Third. In case of a Hindoo, Mussulman, or other person subject to the jurisdiction of the zillah courts dying intestate, but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or if under age or incompetent, and not under the superintendence of the court of wards, his guardian or nearest of kin who by

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special appointment, or by the law and usage of the country, may be authorized to act for him, is not required to apply to the courts of justice for permission to take possession of the estate of the deceased, as far as the same can be done without violence; and the courts of justice are restricted from interference in such cases, except a regular complaint be preferred; when they are to proceed thereupon according to the general regulations.

And courts of justice restricted from interference without a regular complaint.

Fourth. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession: and the courts of justice are restricted from interference, without a regular complaint as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession, for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given, within a reasonable period, may give possession, until the suit may be determined, to the other claimant, or claimants, who may be able to give such security; declaring, at the same time, that such possession is not in any degree to affect the right of property at issue between the parties; but to be considered merely as an administration to the estate, for the benefit of the heirs who may, on investigation, be found entitled to succeed thereto.

More heirs than one to the estate of an intestate, may appoint a common manager, and take possession as in the case of a single heir.

But if the right of succession be disputed, the judge, on a regular suit, to take security from the party in possession; or, in default of such security, may put the other claimants, giving it, in possession.

Such possession not to affect the right of property.

Fifth. In the event of none of the claimants to the estate of a person dying intestate, being able to give the security required by the preceding clause, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the judge within whose jurisdiction such estate may be situated, (or in which the deceased may have resided, or the principal

In what case the judge may appoint an administrator for the care and management of the estate of an intestate.

Sec. XVI.—1. See Act XIX of 1841 which was passed for [illegible] of moveable and immoveable property against wrongful [illegible] in cases of succession.

XVI.—On a reference being made as to the legal and pro-

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part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate; until, in the former case, the suit depending between the several claimants shall have been determined, or, in the latter case, until the legal heir to the estate or other person entitled to receive charge thereof as executor, administrator, or otherwise, shall attend and claim the same; when, if the judge be satisfied that the claim is well founded, or if the same be established after any enquiry that may appear necessary, the administrator appointed by the court shall deliver over the estate to him, with a full and just account of all receipts and disbursements during the period of his administration.

And when such administration is to cease.

Security to be taken from such administrators.

Sixth. In all instances of an administrator being appointed under this section, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust, in a sum proportionate to the extent thereof; and the judge appointing him is authorized to fix for him (subject to the approbation of the court of sudder adawlut, to whom a report is to be made in such instances) an adequate personal allowance, to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.

And in what manner their allowance is to be fixed.

Judges how to proceed in cases of persons dying intestate leaving personal property to which there may be no claimant.

Seventh. The judges of the zillah courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that

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per course to be pursued with respect to the disposal of a house left by a heirless widow who died intestate, the Judges held that it was competent to the zillah court under Clause 5 to take temporary charge of the property on application made for that purpose; but that the court cannot proceed to dispose of it as in the case of personal property, and should no heir appear it will eventually fall under the provisions of Sec. VI, Reg. VII of 1817.—*S. D. Dy. 19th June* 1835.

Cl. 7, Sec. XVI.—1. Vide Act XIX of 1841 as to wrongful possession in cases of succession.

2. It is the duty of the judge and not of the magistrate to take charge of all unclaimed property, except strays, though it may not come specifically within the provisions of this clause.—*F. D. Pro. 7th Aug.* 1835.

The above Clauses 4, 5, 6 and 7 are applicable to Hindoos dying and leaving wills.—Vide Section III, Regulation V of 1829.

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there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property; and to issue an advertisement, in the current language of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose; such advertisement to be published on the spot where the property was found, at the adawlut cutcherry of the zillah, and, if ascertainable, at the dwelling

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Section LXI, Act XXIV of 1867, provides that

"Whenever any person, other than a Hindu, Mahomedan, or Buddist, or a person exempted under the Indian Succession Act 1865, "section 332, from the operation of that Act, shall die leaving assets "within the limits of the jurisdiction of a District Judge, it shall "be the duty of the District Judge to report the circumstance without delay to the Administrator General of the Presidency, retaining the property under his charge, or appointing an officer under "the provisions of the Indian Succession Act 1865, Section 239, to "take and keep possession of the same, until the Administrator General shall have obtained letters of administration, or until some "other person shall have obtained such letters or a certificate from the "Administrator General under the provisions of this Act, when the "property shall be delivered over to the person obtaining such "letters of administration or certificate, or in the event of a will "being discovered, to the person who may obtain probate of the will."

3. When the Administrator General declines to administer to the estates of European British subjects, the provisions of this clause should form the mode of procedure.—*S. U. Let.* 18*th May* 1855.

4. The duty of taking charge of estates under this clause and of the property of Europeans dying intestate, devolves on Subordinate Judges and Principal Sudder Ameens.—*C. O. S. U.* 9*th Oct.* 1843, *No.* 82.

5. The estate of a British subject not being a Military Officer or Soldier, dying at a distance from the station of the Subordinate Court, is to be secured (in cases where no executor or executrix may be present at the place) by the senior Revenue or Judicial European Officer, or in their absence by the District Moonsiff or Tahsildar present on the spot; and at Military stations where no Civil Officer is present, the Commanding Officer will take charge of European estates until the Subordinate Judge may be able to adopt the measures prescribed in the rules laid down in C. O. S. U. 12th May 1834.—*Vide Fort St. George Gazette* 1838, *p.* 272.

6. The Civil Judge is prohibited from interfering with the estates of Military persons deceased, further than in securing their effects for delivery to the nearest Military Authority in localities where there is no Military Officer. In such cases a report of his proceedings should be submitted without delay for the information of the Military Secretary to Government.—*Order of Govt.* 19*th March* 1861.

7. It does not fall to the Military authorities to interfere in the matter of the estates of Military pensioners of any grade, further than, in particular cases, when no judicial authority may be on the spot,

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place of the deceased; or, if the deceased were an European, in the Madras Gazette: after which, should any person attend and satisfy the judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him, on re-payment of any necessary expense incurred in the care of it. Should

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securing the property and reporting the circumstance to such functionary with a view to the adoption of the necessary steps for relieving the Military authority from the charge of the estate of the defunct.—*Vide Fort St. George Gazette* 1844, *p.* 776.

8. All Officers, Civil and Military, who may take charge of the effects of a Chelsea Pensioner dying in the Mofussil, shall report, when forwarding the proceeds to the office of the Administrator General or elsewhere, that the deceased was a Chelsea Pensioner, in order that the effects of all such pensioners who may die in India without any legal heirs or representatives, may be credited to the Crown, to be appropriated in liquidation of the expenses incurred for the funerals of insolvent pensioners.—*Vide Fort St. George Gazette* 1854, *p.* 5.

9. When the heirs of all deceased pensioners of Her Majesty's service are in England, their wills and effects should be forwarded to the Secretary at War through the Deputy Adjutant General of Her Majesty's Forces.—*Ex. Min. Cons.*, 31*st Aug.* 1854.

10. The late Sudder Court in C. O. 12th May 1834 prescribed rules with respect to the estates of European British born subjects dying intestate, of which the following is the epitome.

i. Within twenty-four hours after the death of a British born subject not being a Military Officer or Soldier, in Her Majesty's Service, or as soon after as possible after the death is made known, the effects are to be secured, whether the deceased died intestate or otherwise, by a public officer of the Court under the authority of the Subordinate Judge, except where an executor or executrix appointed by the deceased signifies in writing to the Subordinate Judge his or her intention to execute the office. All plate, jewels, and other valuables are to be brought for safe custody to the treasury of the Court, and there kept till the sale, or other disposition of them by the executor or administrator.

ii. Inventories should be made without delay, and enquiries instituted to ascertain whether the deceased left relatives in India or elsewhere. All particulars should be entered in a book entitled "Register of Estates," each page of which should be signed by the Judge and the officer employed. A copy of such entry should likewise be forwarded to the Administrator General.

iii. Where a will is forthcoming, and the executor or executrix may not signify his or her intention to act, a copy should be forwarded to the Administrator General; and in case the executors are within the Presidency of Madras, a copy, as well as a copy of the inventory, should likewise be forwarded to them.

iv. The Subordinate Judge shall at the request of the Administrator General, when appointed administrator, appoint a proper person or persons to effect the disposal of the property of the deceased, and shall attend as nearly as he can to the wishes of the said administrator expressed in writing.

v Immediately after the sale, the account sale, together with the names of the several purchasers, shall be entered in the "Register of Estates," and a copy forwarded to the said administrator.

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no claim be preferred within the twelve months next ensuing, an inventory of the property, and report of the circumstances of the case, is to be transmitted to the Governor in Council for his orders.

XVII to XX. Repealed by Act X of 1861.

XXI. All orders and process of the court which may be directed to be served, or executed, on any person, are to be written, or printed, in the language of the country where the court shall be held; and are to be sealed with the seal of the court. *No greater number of peons than two are to be deputed to serve or execute any process of the Courts; and one peon only is to be sent, excepting in cases in which the Judges may think two peons necessary.

*Vide (*Madras*) Act II of 1869 and Imperial Act VII of 1870.

XXII. to XXVI. Repealed by (*Madras*) Act II of 1869.

XXVII. to XXIX. Repealed by Act X of 1861.

A. D. 1802. REGULATION V.

A REGULATION *for constituting a sudder adawlut, or chief court of civil judicature, for trying appeals from the decisions of the provincial courts of appeal.*

Passed on the 1st *January* 1802.

I. Repealed by (*Madras*) Act II. of 1869.

II. Rescinded by Section II. Regulation IV, 1806.

III. Repealed by (*Madras*) Act II. of 1869.

IV to XVI. Repealed by Act X. of 1861.

XVII. Repealed by (*Madras*) Act II. of 1869.

XVIII. Rescinded by Act XV. of 1835.

XIX to XXII. Repealed by Act X of 1861.

XXIII. Rescinded by Section II. Regulation III. of 1816.

vi. Subordinate Judges will be held responsible for the strict fulfilment of the several provisions of this order, and for any loss which may arise by a deviation therefrom.

1. In all cases in which the right to succeed to the possession of a landed estate may be disputed on the death of the last incumbent, the Collector will report the circumstances of the case, and will obtain sanction, before putting either or any of the claimants in possession. —*C. O. B. R., 25th Aug.* 1834, *I.* 170.

2. A Collector being in actual charge of a Zemindaree was instructed to retain it until some one produced the authority of a competent Court to receive possession; keeping the surplus collections in deposit. —*Sr. Min. Cons., 2nd October* 1846.—*Ib. I.* 170.

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XXIV to XXVII. Repealed by (*Madras*) Act II. of 1869.

XXVIII. Repealed by Act X of 1861.

XXIX. Repealed by (*Madras*) Act II of 1869.

XXX. * In cases for which no specified rules may exist the Sudder Adawlut is to act according to justice, equity and good conscience.

XXXI to XXXVI. Rescinded by Section II. Regulation VIII. of 1818.

XXXVII. Rescinded by clause I, Section VI, Regulation XV of 1816.

XXXVIII. Repealed by Act X of 1861.

XXXIX. Repealed by (*Madras*) Act II of 1869.

A. D. 1802. REGULATION XII. †

A REGULATION *for the appointment of the Ministerial Officers of the Civil and Criminal Courts of Judicature.*

Passed on the 1*st January* 1802.

THE following rules have been enacted for the appointment of the ministerial officers of the Civil and Criminal Courts of Judicature, and for regulating their respective duties; including also provisions for receiving and trying any charges of corruption or extortion that may be preferred against them or any private servants or dependents of the judges of the courts.

II. Rescinded by Section II., Regulation VII. 1822

III. Repealed by (*Madras*) Act II. of 1869.

Oath to be taken by certain of the native officers of the civil and criminal courts.

IV. The serishtadars or other head native officers, moonshees, mohurrers and nazirs of the Civil and Criminal Courts previous to entering upon the execution of the duties of their offices, shall take and subscribe the following

* See Letters Patent Section 20. † Judicial Civil and Criminal.

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oath, in open court, before the judge or judges of the court to which they may be attached:—

"I, A. B., appointed to the office of serishtadar (or other head officer, or moonshee, mohurrer or nazir) to the Sudder Adawlut, or the Foujdarry Adawlut, [*or the Provincial Court of Appeal for the division of* *or the Court of Circuit for the division of* , *or the Court of Adawlut of the zillah of*], solemnly swear, that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or has been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or has been decided in the court; and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive."

Ministerial officer to perform all such official acts as may be prescribed to them by the judges.

V. *The *Civil and Criminal Courts* are empowered to assign to all ministerial officers attached to *their several courts* the particular duties or business to be performed by them respectively.

VI. to X. Repealed by (*Madras*) Act II of 1869.

Duties to be performed by the native officers.

XI. *The ministerial officers of the *Civil and Criminal Courts*, after the rising of the courts, are to procure all acts of the courts to be executed. The native officers attached to the courts are to perform the above-mentioned duties, and translate and transcribe papers, and arrange and keep the records of the courts. The native officers are to perform the duties specified in this section, in the manner and conformably to the rules which the judges of the *courts to which they may*

* So much of Sections V and XI as applied to Registers and their Assistants, is repealed by *(Madras)* Act II of 1869.

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be respectively attached may think it proper to prescribe. The native officers of each court are not to interfere in any other manner than as above directed, publicly or privately, in any cause or matter depending before the court, or which may have been, or shall be, intended to be brought before it.

XII. to XIV. Repealed by Act XVII of 1862.

XV. and XVI. Repealed by (*Madras*) Act II of 1869.

XVII. and XVIII.—Rescinded by Section II. Regulation IX., 1816.

XIX. and XX. Repealed by *(Madras)* Act II of 1869.

A. D. 1802. REGULATION XIII.*

A REGULATION *for preserving complete the records of the Civil and Criminal Courts of Judicature, and for requiring the Zillah Courts to transmit monthly reports of the suits decided by them to the Provincial Courts of Appeal; and for requiring the Provincial Courts of Appeal to submit monthly reports of the appeals and causes decided by them to the Sudder Adawlut; and for enabling the Sudder Adawlut to judge of the progress made by the Zillah and Provincial Courts in the determination of causes.*

Passed on the 1st January 1802.

To obviate injuries arising to public or private rights or property, by the loss, destruction, or removal of the records of the Courts of Judicature; and with a view to facilitate reference to them; and that the Provincial Courts of Appeal may have in their possession a record of the number and nature of the causes filed and decided in the Zillah Courts, and the time they may have been depending, and the substance of the decision respecting them; and that the Sudder Adawlut may possess similar information with regard to suits filed both in the Zillah Courts and the Provincial Courts of Appeal; and that the Honourable Court of Directors may be apprized of the decisions of the Sudder Adawlut, the following rules have been enacted:—

* Judicial Civil and Criminal.

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II. Two native keepers of the records shall be appointed to keep the Awlut and Foujdarry records in each *Zillah*, and in the Sudder Adawlut and the Foujdarry Adawlut. Two native keepers of the records to be appointed.

III. Rescinded by Section II., Regulation VII., 1822.

IV. *The keepers of the records are to keep a register in the language of the district in which the court may be situated, of all the proceedings, documents, and other records belonging to the courts to which they may respectively be attached, in a book, each leaf of which shall be attested by the official signature of the register, and assistant to the *judges and magistrates of the zillahs, and the* Sudder Adawlut, and the Foujdarry Adawlut, and on the last leaf of which they shall specify in their own handwriting the number of pages contained in the book. To keep a list of the records.

V. The keepers of the records are to indorse upon the back of every paper or document which they may enter in the register, the number of the page in which it may be registered; and the indorsement is to be attested with the official signature of both or either of them. Papers how to be entered.

VI. It shall be the duty of the keepers of the records to see that the records of the court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the court. Keepers of the records to be careful that papers are not destroyed.

VII. If any records entered in the register shall be destroyed, in consequence of the neglect, or any omission of the keepers of the records; or if any such records shall not be forthcoming, and they shall not be able to give a satisfactory account of them, they shall be liable to dismission from their offices. To be liable to dismission for neglect.

VIII. The keepers of the records are to be careful to attend to any rules or orders respecting the duties of their office, that may be prescribed to them by any established regulation, and also to any directions that may be given to them by the court to which they may be attached [*or the register thereof*], for the better keeping, preserving, or registering the records. What rules they are to be subject to.

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* Vide (*Madras*) Act II of 1869.

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IX. The Courts of Adawlut established in the several zillahs are to keep a book in which the daily proceedings in each cause, and every order or act of the court, are to be minuted in the [*Persian or*] language of the district in which the court may be held, and attested with the signature of the judge. The plaint, answer, reply, and rejoinder of the parties, and every deposition, exhibit, and paper whatever, read and filed in each cause, is to be minuted and referred to in this book, by marks or numbers corresponding to marks or numbers to be indorsed on each document when it may be read in the cause.

X. XI. Rescinded by Section II, Regulation IX. 1828.

XII. Repealed by (*Madras*) Act II of 1869.

XIII, XIV. Rescinded by Section II, Regulation IX. 1828.

Sudder Adawlut to keep a daily book and separate records of causes.

XV. The Sudder Adawlut is to keep a book of daily proceedings and a separate record of the appeals or causes which may be decided by them.

XVI to XXIII. Rescinded by Section II, Regulation IX. of 1828.

1. Act VIII of 1859 provides for the keeping of a Register of Civil Suits (Sec. 38); of Appeals (Sec. 341); and of Special Appeals (Sec. 375).

2. When an original document is no longer required, it may be returned to the party who filed it, a copy, if requisite, being retained. *C. O. S. U. 8th January* 1829*A. Vide Secs.* 135, 136 *and* 137, *Act VIII of* 1859.

3. All District Moonsiffs are required to send monthly with the records of the suits before them, the original drafts in their own handwriting of their decrees.—*C. O. S. U. 20th May* 1831. *28th March* 1846, *No.* 104.

4. All documents in records of suits referred to the Sudder Court should be numbered and dated on the outside, and there should be prefixed to the record a sheet of paper containing a complete statement of all such documents, with their corresponding numbers and dates, and likewise a brief description of their contents or purport.—*C. O. S. U. 4th September* 1849, *No.* 115*B.*

5. In order to secure records from being tampered with and falsified, the late Sudder Court prescribed the following rules in their C. O. of 20th February 1850, No. 116B.

i. Each page of the Diary should be numbered and signed by the presiding officer with his initials.

ii. Every interpolation, erasure, or correction, in the Diaries, or in Pleadings, Depositions, or other papers filed of record should be placed between brackets and signed with initials.

iii. The total number of erasures, alterations, &c. contained therein should be noted at the end of every Diary, and at the foot of every paper received, or filed, and similarly verified.

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6. All papers filed of record should be numbered consecutively according to the dates on which they were filed, and exhibits should be marked and endorsed, Plaintiff's with a letter, and Defendant's with a number, thus :—

A (47 No.* on record) Bond for 1000 Rupees executed by Defendant in favour of Plaintiff, on the 13th May 1850.

I (60*) Letter written by Plaintiff to Defendant acknowledging receipt of 20 Rupees, 16th Sep. 1850.—*C. O. S. U. 22nd Jan.* 1852, *No.* 124.

7. In appeal suits the record should remain in the Court where the last decree was passed.—*S. U. Pro. 5th March* 1844.

8. All books officially forwarded to the officers, are to be considered public property attached to the Court, and on change of functionaries, are to be duly transferred to the relieving officer.—*S. U. Dy. 6th Decr.* 1851.

9. Government expect that every attention will be paid by the officers presiding over the several Courts to the careful preservation of all books forming the office records; and that an annual examination should be made, and a list of them as found on each examination placed upon record, duly attested with the signature of the Judge.—*S. U. Dy. 4th Novr.* 1851.

10. Copies of official documents not required for judicial purposes or required to be granted under the Regulations, cannot be furnished to parties without the sanction of Government.—*C. O. S. U. 8th July* 1836, *No.* 32.

11. Judicial officers refusing compliance with an application for copies of official documents should state in their order whether any other objection exists to copies of the papers applied for being furnished.—*Ib. 8th June* 1838, *No.* 53.

12. No public papers can be shown, or copies given, on private application, unless with the previous permission of Government. Any public officer to whom such application may be made, will submit it to Government through the Chief Secretary and await their orders—*Ex. Min. Cons. 22nd January* 1856. *D. Mad. Civ. Pro. p.* 303.

13. The several papers on the record of a suit are to be endorsed according to their contents; every paper having at the head of endorsement the number of the suit to which it belongs—*e. g.* "O. S. No. 1 of 1860, Plaint." "O. S. No. 1 of 1860, Summons to Defendant." "O. S. No. 1 of 1860, Defendant's written statement," &c.—*Sudr. Pro. 8th December* 1860.

14. In addition to the above particulars the plaint is to have endorsed upon it the names of the plaintiff and first defendant, and of the pleaders of the parties, with a note showing the number of documents, if any, produced with the plaint.

15. If any of the parties die, the numbers attached to their names are nevertheless to be continued, and the names of their legal representatives are to be numbered consecutively to those of the original parties.—*Sudr. Pro. 8th December* 1860.

16. Where fresh parties are brought in, they are to be numbered consecutively to the plaintiffs or defendants, as the case may be, already in the suit.—*Sudr. Pro. 8th December* 1860.

17. The witnesses called by the plaintiff or defendant are to be numbered consecutively, and where there are several plaintiffs or

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defendants, the witnesses called by each are not to be numbered separately, but continuously, as if all had been called by a single plaintiff or defendant.—*Sudr. Pro. 8th December* 1860.

18. When the papers in any suit or proceeding are sent for deposit among the court record, the record-keeper is immediately to compare them with the list appertaining thereto, and will be held answerable for any papers the absence of which he may not then bring to the notice of the Judge.

19. If such papers shall have been received from another court, the seal of the packet is not to be broken till the record-keeper is prepared to examine its contents.

20. The following rules are prescribed for the destruction of Judicial Civil records.

(*a.*) Every judgment and decree in a Civil Suit, both those of the Court of first instance and those of the Appellate Court, must always be preserved.

(*b.*) Except these documents, and such as for special reasons the judge may deem it advisable to retain, all records are to be destroyed after three years.

(*c.*) The period for which records are to be kept will run—in Civil cases from the final disposal of the suit by the original or appellate Court, as the case may be.

(*d.*) Exhibits filed by the parties to a suit will be destroyed with other records after three years; application should therefore be made within that period for any document of value that the parties may wish to receive back.—*H. C. Pro. 18th February* 1865.

21. The above rules refer to records of particular suits, and do not sanction the destruction of Registers of suits or any documents of a similar nature.—*H. C. Pro. 4th February* 1867.

A. D. 1816. REGULATION III.

A REGULATION *for rescinding Regulation VI. of* 1806, *and for authorizing the Courts of Sudder and Foujdarry Adawlut to sanction the occasional Adjournment of the Civil and Criminal Courts under the Presidency of Fort St. George.*

Passed on the 23*rd April* 1816.

Preamble. IT having been found that the annual festivals called the Dassarah and Muharram are not held in equal estimation in all the provinces subject to the Presidency of Fort St. George, and that the wishes of the native officers and ser-

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vants, as well as the general convenience of the courts, would best be met by authorizing vacations of the different Zillah and Provincial Courts at different periods, the Right Honorable the Governor in Council has enacted the following rules to be in force from the date of their promulgation.

II. Repealed by (*Madras*) Act II of 1869.

III. The Courts of Sudder and Foujdarry Adawlut are hereby empowered to permit from time to time the judges of the Civil and Criminal Courts under the Presidency of Fort St. George to adjourn their respective courts, and in like manner themselves to adjourn; so that such occasional adjournments of any court shall not collectively exceed two months in each year.

Courts of Sudder and Foujdarry Adawlut to sanction occasional adjournments of the lower courts, and in like manner to adjourn themselves.

1. The absence of a judicial officer from the station of the Court more than five days subjects him not only to loss of his allowances during his absence, but also to loss of his appointment. On occasions of holidays or otherwise, when a judicial officer can be absent from his station without impediment to the performance of his duty, he may be absent for a period not exceeding five days, but on such occasions he should report the circumstance to the Sudder Court, which Court shall check any immoderate use of such indulgence.—*Or. of Govt. 16th Novr.* 1841.

2. The adjournment of the Court affords no ground to judicial officers absenting themselves from their stations beyond 5 days. Sunday need not be counted among the five days of absence.—*C. O. S. U. 16th July* 1858, *No.* 136*C*.

3. Principal Sudder Ameens and District Moonsiffs are authorized to absent themselves occasionally from their station without loss of allowance, for a period not exceeding 5 days—*C. O. S. U. 14th October* 1845, *No.* 98.

4. The Civil and Session Judges, the Judicial Commissioner of the Neilgherry Hills, the Judges of the Courts of Small Causes, and the Principal Sudr Ameens, are authorized to adjourn their Courts for two months, and the District Moonsifs for six weeks in each year.

5. Except by special leave, the adjournment of all the Courts in one District must be simultaneous, and may take place at any date between the termination of the April sessions and the 15th July. The adjournment of the District Moonsiff's Courts may take place during the first or last weeks of the adjournment of the other Courts. The adjournment in any month should commence as soon as possible after the termination of the regular session of the month.

6. The date of the adjournment in each case must be reported to the High Court, and the Civil and Sessions Judges must at the same time certify that all the business of the sessions has been disposed of, and that no reference from the Session Court in the case of a capital sentence is pending in the High Court.

7. Judicial Officers leaving the Court station during the adjournment will not be entitled to privilege leave, and in no case will the application for such leave be granted or receive the support of the High Court unless under very exceptional circumstances. Further, no District Moonsiff will be granted privilege leave under any circum-

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stances without some person being appointed to act for him during his absence, except for a few days on very urgent private affairs.

8. During any adjournment of a Court, the judge is at liberty to hear and determine any suit or matter, which both parties may be willing that he should so hear and determine.

9. During the adjournment of the Courts of every grade, two days in the week at the Court shall be set apart and notified in the District Gazette, on which plaints, petitions, or other papers will be received in Court. The date on which they are presented must be carefully endorsed on them. The chief ministerial officer of every Court will be responsible for the due observance of this rule, and will, previously to the adjournment, arrange for some qualified officer being present at the Court House on the days and at the hours fixed.

10. During any short or casual adjournment by reason of the absence of the judge, the chief ministerial officer of the Court must be daily in attendance at the Court House to receive and file all plaints, petitions, or other papers presented by parties, and see to the due conduct of all ministerial business that can be carried on in the absence of the judge.

11. During adjournments for customary holidays of more than two days duration, the said officer must arrange for the attendance of a qualified officer at a certain hour of the third and of each subsequent day, except Christmas day, Good Friday and Sundays (of which hours previous notice shall have been given in the District Gazette,) to receive all plaints, petitions or other papers; and carefully to endorse thereon the date of their reception.

12. When the time limited for the presentation of any plaint, petition, or other paper expires during any adjournment of the Court, such plaint, petition or paper must be presented to the ministerial officer left in charge during the adjournment for the purpose of receiving papers, either within the limited time or on the 1st day after the expiration of such limited time, when the said ministerial officer shall attend. The adjournment of the Court cannot of itself be deemed a sufficient cause for not presenting the plaint, petition, or other paper within the limited time, but in every case in which the Court has a discretionary power in the matter, special circumstances must be shown. When the Court has no discretionary power, the time being absolutely fixed by law, the presentation must of course take place within the time so fixed.

A. D. 1816. REGULATION IV.

A * REGULATION *for declaring the head Inhabitants of Villages to be Moonsifs in their respective Villages, to hear and decide Civil Suits for Sums of Money, or other Personal Property, to a limited amount, and for defining their jurisdiction.*

Passed on the 17th May 1816.

Preamble.

WITH a view to lesson the business of the Zillah Courts, to diminish the expense of litigation in petty suits, and to promote the speedy adjustment of such suits without sub-

* See Act VIII. 1859. Sec. 383.

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jecting individuals to the inconvenience attending a long absence from their homes, the Governor in Council has enacted the following regulation to be in force in the territories subject to the presidency of Fort St. George:—

Heads of villages to be moonsifs within their villages.

II. Heads of villages shall, by virtue of their office, be moonsifs within their respective villages.

Heads of villages defined.

III. *First.* In villages, whether permanently settled, rented, or in the hands of Government, where there may be more than one head man coming under the denomination of potail, reddi, pedda-capoo, yajeman, renter, or any other designation, the person who collects the revenue, and under whose authority the village servants act, shall be considered as the head of the village; no person shall act as head of the village who does not generally reside in it. Where there is but one resident renter of a village, he shall be considered as the head of the village; when the renter is not a resident, the person who rents or manages the village under him shall be considered as the head of the village.

Where doubts may arise, collectors are to select one person to act as head of the village.

Second. Where from the names of two or more persons being introduced in the same pottah, as heads or renters of the village, or from any other cause, doubts may arise as to whom the office of head of the village belongs, the collector shall select one person and give him a pottah to act as the head of the village.

Village moonsifs exempt from oaths of office.

IV. *First.* Village moonsifs shall not be required to take any official oath.

And from being called upon to answer for their conduct as moonsifs before the district moonsifs.

Second. Village moonsifs shall not be liable to be called before the district moonsif to answer for their conduct as village moonsifs in any case.

Sec. III.—1. The appointment and dismissal of the Village Moonsiffs are vested exclusively in the Collector.—*S. U. Dy. 8th Feby.* 1831, *D. Mad. Civ. Pro. h.*

2. Collectors should not dismiss Village Officers, but upon the most serious grounds, and the nearest heir of the party dismissed should be appointed in his place.—*C. O. B. R., 25th June* 1840, *1.* 289.

3. It is obviously desirable that the office of Potail should be held by a male member of the family, capable of performing the duties, rather than by a female, who can only act by deputy. A brother of a deceased Potail appointed to the vacancy was instructed to provide for the widow, in the manner customary among Hindoos.—*Bd. to Col. of Cuddapah 7th Nov.* 1850, *No.* 2268. *C. O. B. R. 1,* 290.

Sec. IV. Zillah Judges cannot exercise direct interference or control over Village Moonsiffs, except on the charges specified in Cl. 3 of this Section.—*C. O. S. U. 4th March* 1817.

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Or before the *zillah* judge.

Third. Village moonsifs shall not be liable to be called before the *Zillah* judge to answer for their conduct as village moonsifs, except on charges of corruption, or of having exceeded the powers of fine or imprisonment granted to them by this regulation.

Exception.

Suits cognizable by village moonsifs.

V. *First.* Village moonsifs are empowered to hear, try, and determine, of their own authority and without appeal, such suits as may be preferred to them for sums of money or other personal property, the amount or value of which shall not exceed ten *Arcot* rupees.

No such suits to be entertained where the cause of action shall have arisen twelve years before the commencement of the suit.

Exception to the rule.

Second. Provided that, in the suits specified in the preceding clause of this section, the cause of action have arisen within twelve years previous to the institution of the suit, or that the plaintiff do shew by clear and positive proof, either that he had demanded the money, or matter in question, and that the defendant had admitted the justice of the demand, or that he had directly preferred his claim within the period above mentioned to a competent authority, and in such case, that he assign satisfactory reasons to the moonsif why he did not proceed in the suit, or prove that from minority or other good and sufficient cause he was precluded from obtaining redress.

Village moonsifs prohibited trying suits for damages of any kind.

VI. Village moonsifs are hereby prohibited from receiving or trying any suit for damages on account of personal injuries, or for personal damages of any nature.

Village moonsifs prohibited trying suits in which they or their servants are interested.

VII. Village moonsifs are hereby prohibited from trying any suit in which they or any of their immediate servants are personally interested.

Village moonsifs prohibited trying suits against persons not resident in their jurisdiction.

VIII. Village moonsifs are prohibited from trying and determining suits against any person or persons who may not be found to be actually resident within their jurisdiction at the time when such suits shall be preferred.

Vakeels to be relatives, servants, or dependents of parties; to be furnished with vakalutnamahs.

IX. *First.* Plaintiffs and defendants shall be allowed to employ a relative, a servant, or a dependent to plead before the village moonsif, on furnishing the person to be so employed with a vakalutnamah describing his relation to his employer and the matter in which he is empowered to act.

Persons not to act as vakeel until their va-

Second. Village moonsifs shall not in any case permit any person to act as the vakeel of another, until such person

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shall have exhibited a vakalutnamah containing the information required by the preceding clause.

kalutnamahs have been exhibited.

X. *First.* In hearing, trying, and determining civil suits, the village moonsifs shall be assisted by the village kurnums, or persons holding the office of kurnum for the time being, a part of whose duty it shall be to attend as assessors to write the proceedings of the moonsifs, and when required, to afford them their advice. But the village moonsif shall decide by his own opinion, whether it agree or not with that of the kurnum.

Kurnums to assist moonsifs.

Moonsifs to decide on their own opinion.

Second. The kurnums shall keep registers of the suits preferred to the village moonsifs, entering each complaint in the order in which it may be received.

Kurnums to keep registers of suits preferred to village moonsifs.

XI. The plaint shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total amount or value of the property claimed, and all material circumstances which may elucidate the transaction.

What the plaint is to contain.

XII. *First.* Upon a complaint being preferred in writing to the village moonsif, he shall by a verbal summons require the defendant to appear before him in person or by vakeel, immediately or within two days from the delivery of the summons.

Village moonsifs how to proceed on a complaint being preferred to them.
Defendant to be summoned verbally.

Second. The summons shall be served by the village servant usually employed in carrying messages, who shall be accompanied by the plaintiff or his vakeel, to point out the defendant and to explain to him the demand against him.

Summons, by whom and how to be served.

Third. If a defendant, having been served with a summons in the mode above prescribed, shall neglect or refuse to attend within the time limited, the village servant shall be called upon to make *oath* to the service of the summons, after which the village moonsif shall proceed

On the non-appearance of the defendant on the day fixed, the village servant to make oath to the service of the summons. Moonsif to give judgment ex parte.

Clause 2 Sec. X. The form of the registers required to be kept under this clause was prescribed by Section XXXVI of this Regulation, but by Regulation IX of 1828, it was provided that such matters should be left open to alteration as the Court of Suder and Fouzdari Adaulut (present High Court) under the orders of Government, may, according to circumstances, from time to time direct, instead of being fixed by law.

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to give judgment on the plaintiff's vouchers and the evidence of his witnesses.

If defendant appear, plaint to be read to him.

XIII. If the defendant shall attend in obedience to the summons, the plaint shall be read over to him, and if he shall acknowledge that the plaintiff has a claim upon him, the village moonsif shall advise the parties to settle the matter amicably. If the plaintiff be satisfied by the defendant, the village moonsif shall cause him to execute a razeenamah, stating in what manner the defendant has satisfied him, which razeemanah shall be certified by the village moonsif as having been executed in his presence, and he shall then deliver it to the defendant.

Razeenamah to be taken if the dispute be settled amicably. What it is to contain.

Otherwise, copy of the plaint to be delivered to the defendant, and his answer to be required.

XIV. *First.* If the defendant, on the plaint being read over to him, shall object to the demand, and the parties shall be unable to adjust the dispute amicably, the village moonsif shall deliver to the defendant a copy of the plaint, and shall require him to deliver his answer immediately, or on a certain day not more than five days after the day on which the plaint was read.

Answer to state all he has to say: no further pleadings to be admitted.

Second. The answer shall contain all that the defendant has to state regarding the case, and no further pleading shall be admitted.

When and how the truth of the complaint is to be examined.

Third. When the answer has been filed, the village moonsif, either immediately, or on a fixed day as soon after as the business before him will permit, shall examine the truth of the complaint or claim. If the parties are willing to dispense with the examination of witnesses, the village moonsif shall give his decision on due consideration of the plaint and answer, and any vouchers which may be produced; or if either party is willing to let the cause be settled by the *oath* of the other, the village moonsif shall give his decision according to such *oath*.

Village moonsifs may require the attendance of witnesses by a verbal summons.

XV. *First.* Village moonsifs are authorized to require the attendance of any person in their respective villages who may be named as a witness by any party in a suit, by a verbal summons, fixing a day for the attendance of such witness.

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Second. The summons shall be served by the village servant usually charged with carrying messages, attended by the parties or their respective vakeels to point out the witnesses. **By whom to be served.**

Third. The village moonsifs are authorized to cause an *oath* to be administered to witnesses in cases where they may deem it necessary. **Village moonsifs authorized to cause oaths to be administered to witnesses when necessary.**

Fourth. The village moonsif shall, previously to the examination of a witness, inform him that he has authority to cause an *oath* to be administered to him when he may think he is not giving his evidence correctly, which authority the village moonsif shall exercise at his discretion. **The village moonsif is to exercise this authority at his discretion.**

Fifth. It shall not in any case be necessary to take the depositions of the witnesses in writing. **Witnesses to be examined *viva voce*.**

Sixth. If a witness duly summoned shall refuse to attend, or attending shall refuse to answer, such witness shall be liable to be fined for every such offence at the discretion of the village moonsif, in a sum not exceeding half a rupee. **Witnesses refusing to attend or to answer liable to be fined.**

XVI. *First.* If any person, whose testimony is necessary in a suit, shall be temporarily absent from the village, the trial of the suit shall be postponed until his return. **Trial to be deferred if a necessary witness be absent from the village.**

Second. If in any case the evidence of a person residing in a different village shall be required, provided that village be not farther distant than two coss, the moonsif requiring his attendance shall address a summons to such person containing the names of the parties in the suit, and fixing a day for his attendance, and shall forward it to the moonsif of the village in which such person shall reside, who shall cause the summons to be served by his own village servants, and shall return the summons, with a certificate that it has been duly served, to the moonsif who issued it. **How the evidence of a person residing in a different village is to be obtained, if within a distance of two coss.**

Third. Any person refusing or neglecting to attend on such summons shall be liable to be fined in a sum not exceed- **Persons refusing to attend on such summons liable to be fined.**

Sec. XVI.—Village Moonsiffs were ordered to observe the principle of treating all public officers as well as other persons appearing before their Courts, with the attention and respect due to their rank and station in society.—*C. O. S. U. 25th Aug.* 1825.

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Fine, by whom to be levied.

ing one half of a rupee, which shall be levied by the village moonsif in whose jurisdiction such person may reside, on a communication of the order imposing the fine being made to such moonsif, by the moonsif by whom such order may be passed.

How the evidence of persons residing in a different village is to be taken, if beyond the distance of two coss.

Fourth. If the person whose evidence is required shall reside at a greater distance from the village than two coss, the village moonsif is authorized to request, by a letter bearing his signature, the moonsif of the village in which the person whose testimony is required may reside, to examine such witness on written interrogatories prepared by one or both parties, or by their vakeels. The village moonsif shall examine the witness or witnesses named in the letter, according to the requisition of it, and shall return the deposition of each witness, duly subscribed by him, to the moonsif of the village where the cause may be depending, by the time required in the letter; and every deposition so taken shall be received as good evidence in the cause.

Attendance of women of rank or high caste not to be required. To furnish their evidence in writing.

Fifth. Village moonsifs shall not summon any woman to appear before them whose rank or caste may render it improper to require her attendance; but when the evidence of such person is necessary, the village moonsif shall require her to furnish her deposition in writing duly attested. The deponent shall state in her deposition that she is prepared to *swear* to the truth of her deposition if required.

Village moonsifs prohibited from requiring securities.

XVII. The village moonsifs, in suits depending before them, are hereby strictly prohibited from requiring securities of any kind from defendants.

Suit to be dismissed if the plaintiff do not attend at the time fixed for the trial and not again revived. Proviso.

XVIII. *First.* If a plaintiff shall not attend on the day fixed for the trial, and the defendant shall be in attendance before the moonsif, the suit shall be dismissed, and shall not be revived unless the plaintiff shall shew good and sufficient cause for his absence.

If the defendant do not attend or refuse to answer, the suit to be tried ex parte.

Second. If the defendant shall refuse to answer the plaint, or shall not attend on the day fixed for the trial, the village moonsif shall proceed to try the cause ex parte as prescribed in Clause 3rd, Section XII. of this regulation.

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XIX. Parties, or their vakeels and witnesses, guilty of disrespect to a village moonsif, shall be liable to be fined by him in a sum not exceeding one half of a rupee.

Parties, or their vakeels and witnesses, liable to fine for disrespect to village moonsifs.

XX. When the parties have been heard, the exhibits received and considered, and the witnesses on both sides examined, the village moonsif shall give judgment according to justice and right.

The decision to be passed after due consideration.

XXI. The decree shall specify the names of the parties and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract statement of the principal grounds and reasons on which the decision may be passed. It shall specify the sum of money or the value of the personal property adjudged. The decree shall bear the signature or mark and seal of the village moonsif and kurnum, and shall be dated on the day on which it is passed.

What shall be contained in the decree.

XXII. Repealed by Act XXVIII of 1855.

XXIII. Village moonsifs shall have authority to allow in their decrees such reasonable periods for their execution as may appear just in particular cases, not however in any case exceeding three months.

Village moonsifs may allow a reasonable period for the execution of their decrees.

XXIV. *First.* Village moonsifs shall within three days after passing a decree, cause two copies of it to be prepared by the village kurnum, and shall deliver one copy to each party; the date of such delivery being certified by the signature of the moonsif and of the kurnum.

Copies of the decree to be given to parties within three days after its date.
Date of the delivery to be certified by the moonsif and kurnum.

Second. If the plaintiff or defendant shall not attend in person or by vakeel to receive a copy of the decree, or shall refuse to receive it when tendered, the village moonsif shall cause such omission or refusal to be noted on the back of the copy of the decree so omitted to be taken, or refused, and shall deposit it with the kurnum for the purpose of delivering it to the party, if he shall afterwards claim it.

Non-attendance on delivery of, or refusal to receive the decree, to be noted on the back of it, and the decree to be deposited with the kurnum.

Sec. XXI.—When a Kurnum refuses to sign a decree passed by a Village Moonsiff, as required by this section, the contumacy of such Kurnum should be reported to the Collector in order to his removal from office.—*S. U. Let. 25th Nov.* 1846.

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Village moonsifs not to punish any party, vakeel, or witness. Exception.

XXV. No village moonsif shall punish any party, vakeel or witness in any suit before him excepting under the provisions specified in Clause 6th, Section XV., Clause 3rd, Section XVI. and Section XIX. of this regulation; provided, however, that if the party, vakeel, or witness shall refuse, or be unable to pay the fine, the village moonsif may at his discretion commute such fine for twelve hours' confinement in the village choultry.

Cases in which fines may be commuted for twelve hours' confinement.

Suits in which village moonsifs are parties, by whom to be tried.

XXVI. Suits in which the village moonsif is a party shall be tried by the moonsif of another village, or by any competent authority.

Village moonsifs authorised as arbitrators to determine suits for sums of money or other personal property not exceeding one hundred rupees. Proviso.

XXVII. The village moonsif is authorized to hear, try, and determine as arbitrator, suits for sums of money or other personal property, the amount or value of which shall not exceed one hundred *Arcot* rupees; provided both the parties interested in such suits shall voluntarily agree in writing to refer them to his decision as arbitrator, and shall voluntarily subscribe bonds in the presence of two or more credible witnesses, who shall attest the same, binding themselves to abide by the decision of the moonsif to whom they may refer the suit, whether he be the moonsif of their own village or of any other village.

By what rules they are to be guided in deciding them.

XXVIII. In trying the suits described in the foregoing section, the village moonsif shall be guided by the rules prescribed for his conduct in trying suits preferred to him under the provisions of Section V. of this regulation, so far as those rules may be applicable.

Decisions of village moonsifs not to be carried into execution in less than thirty days after date of delivery.

XXIX. The decisions of village moonsifs, either as moonsif or arbitrator, shall not be carried into execution by them in less than thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or to their vakeels; should either party present a petition to the *zillah* judge within that period, charging the village moonsif with corruption or gross partiality, the *zillah* judge shall order execution of the decree to be stayed, and if the charge of corruption or partiality be proved to

On proof of corrup-

Sec. XXIX.—Decrees of Village Moonsifs not to be executed in less than 30 days from the date on which copies may have been furnished or tendered to parties.—*Q. O. S. U. 4th March* 1817.

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the full satisfaction of the *zillah* judge by the *oaths* of two credible witnesses at the least, he shall annul the decision.

tion or partiality, the *zillah* judge to annul the decision.

XXX. *First.* If the defendant shall not discharge the sum decreed against him within thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties, or to their vakeels, or within the period limited in the decree, the village moonsif shall, on the written application of the party in whose favour the decree may be given, attach the property of the party cast to the value of the sum decreed, and shall give immediate notice of such attachment, and of the day fixed for the sale to the district moonsif, who shall send a peon to sell the attached property by public auction in presence of the village

Property in certain cases to be attached in satisfaction of decrees.

Notice thereof to be given to the district moonsifs.

Sec. XXX.—1. It is the duty of the District Moonsiff to satisfy himself of the legality of the decree of the Village Moonsiff which he is called upon to execute.—*C. O. S. U. 4th March* 1817.

2. A District Moonsiff enforcing an illegal decision passed by a Village Moonsif, would render himself amenable to the provisions of some one of the clauses of Sec. VII of this Reg. according to the culpability of his act.—*Ib.*

3. No evil can accrue in general from illegal decisions passed by Village Moonsiffs, as they would remain a dead letter and could not be enforced.—*Ib.*

4. When corruption or partiality has actuated the Moonsiffs, the circumstance may be brought before the Judge and the decrees annulled.—*Ib.*

5. Both Village and District Moonsiffs are amenable to prosecutions by the parties aggrieved for unwarrantable acts of authority.—*Ib.*

6. Any observations which it may be found necessary to record on the subject of the reports forwarded by the Village Moonsiffs and Punchayets should be communicated through the District Moonsiffs, in order that the latter officer, by having his attention directed to the several instances in which these lower judicatories may have exceeded their authority, may be led to exercise with circumspection the authority vested in him by the Regulations, in regard to the execution of their decrees.—*C. O. S. U.* 1*st Dec.* 1817.

7. Prior to the execution of any decree passed, either by a Village Moonsiff or Village Punchayet, the District Moonsiff should, by reference to the monthly reports of Village Moonsiffs, be careful to satisfy himself that the suit is neither for real property nor for personal damages, and that the interest has been calculated agreeably to the Regulations.—*Ib.*

8. In order that District Moonsiffs may be enabled to satisfy themselves of the legality of the decrees of the Village Moonsiffs which they may be called upon to execute, the notice required to be sent to them by Sec. XXX should be accompanied by a copy of the decree intended to be enforced.—*S. U. Pro.* 11*th Feby.* 1818.

9. The period for the execution of a Village Moonsiff's decree should in no case be delayed after the expiration of three months, during which time alone its operation can be suspended.—*C. O. S. U.* 24*th Dec.* 1829.

10. The process prescribed for the execution of a decree of the Village Moonsiff is exclusively against the *property*, and not against the *person* of the defendant; consequently a debtor cannot be confined

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Process to be observed to sell the same.

moonsif, at the expiration of the time fixed in the notice of sale.

The peon deputed not to have charge of the property under attachment. Duty of the peon. Receipt to be taken.

Second. The peon deputed by the district moonsif shall not have any charge of the property under attachment. His duty shall be to sell the property and receive the purchase-money, from which he shall pay to the party in whose favour judgment may be given, the amount decreed, taking his receipt attested by the village moonsif and kurnum.

Batta to the peon and all expenses attending the sale, how to be defrayed.

Third. The peon deputed by the district moonsif shall be entitled to receive batta at the rate of two annas a rupee per diem during his deputation, and the amount of such

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in the Zillah Jail in satisfaction of a decree passed by that officer.—*C. O. Ib.*

11. No provision is made in this Regulation for the enforcement of a decree of a Village Moonsiff by any authority superior to the District Moonsiff. A Zillah Judge is therefore incompetent to enforce the decree of a Village Moonsiff.—*C. O. S. U. 24th Dec.* 1829.

12. It is the intention of this Regulation to prevent the Court suspending the execution of a decree of a Village Moonsiff to the detriment of a plaintiff beyond three months, and not to compel execution within the period in question, whether the plaintiff wish it or not, and no objection exists to the execution of decrees of Village Moonsiffs at any time within the period allowed by the law of limitation.—*S. U. Pro. 27th March* 1831, *and C. O. S. U. 12th Sept.* 1851, 123*A*.

13. Razeenamahs presented before Village Moonsiffs have the same force as decrees, and should be executed in like manner.—*S. U. Pro. 27th March* 1831.

14. Collectors are informed that they should avail themselves of all occasions, and more particularly those presented by the assemblage of the inhabitants of the District at the time of the Annual Settlement, to impress upon the Village Moonsiffs the importance of their exercising the judicial powers conferred upon them by Regulation IV of 1816, the dignity attaching to the office of Moonsiff, and the benefits to the people generally accruing from its exercise. Copies of the Regulation should be supplied to those Moonsiffs who are unprovided with it, and explanation freely afforded on all points connected with the Regulation, which may seem to be imperfectly understood. The ryots should at the same time be encouraged to submit their differences for the decision or arbitration of their Moonsiff, and the advantage of this course, above that of resorting to the Court of the District Moonsiff, and other authority, be clearly pointed out to them. The Collectors should communicate with the Civil Courts on all points connected with the subject on which it may be necessary to obtain their advice and instructions, referring to the Board on all matters bearing upon the general question which may fall within its province. —*C. O. B. R.* 29th *January* 1846. *S. O. p.* 5.

15. Village Moonsiffs to be supplied with copies of Regulations IV, V and XI of 1816, and not to be unnecessarily withdrawn and detained from their homes.—*C. O. B. R. 25th Feb.* 1855, *p.* 10.

16. Collectors are enjoined to relieve village officers from unnecessary attendance on the Tahsildar's Cutcherries, and to endeavour to make the office of the Head of the Village respectable, and an object of laudable ambition.—*Ib. 4th July* 1856, *p.* 60.

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batta, together with every expense that may attend the sale, shall be defrayed by the party cast, or deducted from the proceeds of the sale, on the certificate of the moonsif and kurnum that such amount of batta and such expenses are correctly charged.

Fourth. If any surplus shall remain of the proceeds of the property sold, after satisfying the decree and defraying the expenses incurred, including the batta of the peon, it shall be paid to the party cast, and his receipt for the same, attested by the village moonsif and kurnum, shall be taken by the peon, and produced to the district moonsif, along with the receipt of the party in whose favour the decree may have been passed, and the certificate of the village moonsif of the amount of batta and expenses attending the sale, as the vouchers of his having correctly discharged his duty.

Surplus to whom to be paid.

Receipt to be taken and produced to the district moonsif with what other vouchers.

Fifth. Provided, however, that in every instance of property being attached in execution of a decree, the village moonsif shall cause public notice of the intended sale of such property to be given by beat of drum through the village five days previous to the sale. Provided further, that it shall be at the option of the party cast to satisfy the judgment at any time previous to the period fixed for the sale, and that on his satisfying the judgment by paying the amount to the village moonsif, or the peon if he should have arrived, together with the batta of the peon and all other attending expenses, according to a certificate to be furnished by the village moonsif, the village moonsif shall withdraw the attachment and restore the property to the possession of the owner.

In cases of attachment, what further notice is to be given.

Attachment to be withdrawn on satisfaction of the judgment being made previous to the time fixed for sale.

Sixth. Resistance to a sale ordered by a village moonsif shall be considered to be a breach of the peace, and shall be punished as such.

Resistance to a sale to be punished as a breach of the peace.

XXXI. The village kurnum shall keep a register of all sales by auction in his village in satisfaction of decrees, noting therein the day of sale, the particulars of property sold, its amount, the name of the purchaser, and his residence.

Register of all sales by auction to be kept: what it is to contain.

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Suits tried by village moonsifs exempt from fees, stamp duties, and all charges.

XXXII. Suits tried by village moonsifs shall be exempt from (*fees**) stamp duties, batta, and charges of every description, excepting those specified in Section XXX of this regulation.

Amount of fines levied to be sent monthly to the district moonsif with lists.

What to contain.

XXXIII. All fines levied by the village moonsifs shall be sent at the end of each month to the district moonsif, with a list stating the names and situations of the parties from whom such fines have been levied, and the reasons for which the fines were imposed.

No exhibits to be admitted which are not written on the prescribed stamped paper or cadjan.

XXXIV. *First.* The village moonsifs are prohibited from admitting as an exhibit, or from receiving in evidence, any obligation, bond, deed or document, whether it be the original or a copy, of a description which is or may be required to be written on stamped paper or stamped cadjan, unless it shall have been duly executed on stamped paper or stamped cadjan of the description and value prescribed by the regulations.

Second. Repealed by (*Madras*) Act II of 1869.

Village moonsifs liable to prosecution for corruption or oppressive and unwarranted acts.

XXXV. *First.* Village moonsifs shall be liable to prosecution in the *Zillah* Court for corruption in the discharge of their trust by either party in the suit, and for any oppressive and unwarranted act of authority by the party injured, and upon proof of the charge to the satisfaction of the judge, he shall in the first-mentioned case adjudge the offender to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit; and in the second, award such damages and costs to the party injured as may appear to him equitable; but no village moonsif shall be liable to be prosecuted for want of form, or for error in his proceedings or judgment; nor shall any process whatever be issued against a village moonsif who may be charged with corruption, or any oppressive and unwarranted act of authority, unless the judge shall be previously satisfied by sufficient evidence that there is probable cause to believe that the charge is well founded, and unless the charge shall be preferred within three months from the date of the act complained of.

Punishment on conviction.

Not liable to prosecution for errors or want of form.

Proviso under which process is to be issued on charges of corruption.

* See Act VII of 1870.

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Second. The *zillah* judge shall, on charges of corruption, fine the party by whom or for whom the corruption may have been practised in the suit, provided he shall have assented to such corruption, in a sum equal to the value of the thing or sum of money which the village moonsif may be proved to have so corruptly received.

The party by whom or for whom the corruption is practised to be fined. Proviso.

Third. If the corruption charged against any village moonsif shall not be proved to the satisfaction of the *zillah* judge, he shall award full costs and such damages to the village moonsif as may appear to him equitable, and he shall levy a fine from the party making such groundless charge not exceeding the value of the thing or sum of money charged to have been corruptly received.

If the corruption be not proved, the moonsif to have damages and costs, and the party making the groundless charge to be fined.

XXXVI. to XXXVIII. Rescinded by Section II., Regulation IX., 1828.

XXXIX. A copy of this regulation shall be lodged with and preserved by each village kurnum, for the information of the village moonsifs.

Copy of this regulation to be lodged with the village kurnum.

A. D. 1816. REGULATION V.

A REGULATION* *for authorizing Village Moonsifs to assemble Village Punchayets for the Adjudication of Civil Suits for sums of money or other Personal Property, without Limitation as to Amount or Value, within their respective Jurisdictions, and for defining the powers and Authority to be vested in such Village Punchayets.*

Passed on the 17*th May* 1816.

IT being desirable, with a view to diminish the expense of litigation, and to render the principal and more intelligent inhabitants useful and respectable by employing them in administering justice to their neighbours, that civil suits between the native inhabitants of the territories subject to the Presidency of Fort St. George should be referred for adjudication to assemblies denominated punchayets, and that for the purpose of facilitating such reference, the village moon-

* See Act VIII of 1859, Sec. 383.

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sifs should be authorized to summon a punchayet on the application of both parties in a suit, and to refer such suit to be heard, tried, and determined by such punchayet, and it being deemed expedient to protect members of village punchayets from being called to account for their conduct in the performance of these duties, except on charges of corruption, the Governor in Council has enacted the following rules:—

Village moonsifs authorized to summon punchayets within their respective villages for the decision of suits for sums of money or other personal property of any amount or value.

II. *First.* Village moonsifs are hereby declared to be authorized to summon punchayets within their respective villages for the decision of suits for sums of money or other personal property, without limitation as to amount or value, in the two following cases:—

Proviso.

Second. In suits where both plaintiff and defendant may jointly agree that the matter at issue shall be determined by a village punchayet without appeal, and may prefer a request in writing to the village moonsif to summon a punchayet, whether he be the moonsif of the village in which the parties reside, or of any other village; or where one party having preferred a request in writing to the village moonsif to summon a punchayet, the other party, being an inhabitant of the same village, on being summoned by the village moonsif, shall attend and voluntarily give his assent in writing to the village moonsif agreeing to that mode of trial.

No such suits to be entertained when the cause of action shall have arisen twelve years before the commencement of the suit.

Third. Provided, however, that in the cases specified in the preceding clause of this section, the cause of action have arisen within twelve years previous to the institution of the suit, or that the plaintiff do shew by clear and positive proof, either that he had demanded the money or matter in question, and that the defendant had admitted the justice of the demand; or that he had directly preferred his claim within the period above mentioned to a competent authority, and in such case that he assign satisfactory reasons to the punchayet why he did not proceed in the suit, or prove that from minority, or other good and sufficient cause, he was precluded from obtaining redress.

Exception to the rule.

Punchayet to consist of an odd number; the majority shall decide.

III. *First.* The village punchayet shall always consist of an odd number, never less than five nor more than eleven, and the majority shall decide.

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Second. The village punchayet shall be composed of the most respectable inhabitants of the village, who shall be called upon to serve in rotation whenever their number is sufficient for this purpose, and any inhabitant of the village refusing to serve on a village punchayet shall be liable to be fined at the discretion of the village moonsif in a sum not exceeding five *Arcot* rupees, which shall be levied, if necessary, by the village moonsif under the provisions for the execution of decrees in Section XXX. Regulation IV. 1816.

Of whom to be composed.

Refusing inhabitant liable to fine.

How to be levied.

Third. Any respectable inhabitant of a neighbouring village may be placed on a village punchayet, if he be willing to undertake the duty.

Inhabitant of a neighbouring village may be placed on a punchayet.

Fourth. When the parties in suits are of different castes or professions, the village moonsif shall, in all practicable cases, name an equal number of persons of the caste or profession to which each party may belong to compose a part of the village punchayet, and shall complete the punchayet by the selection of a person or persons belonging to a caste or profession different from that of both the parties.

When the parties are of different castes, how the punchayet is to be formed.

Fifth. If either party shall object to any one or more of the members nominated to compose the village punchayet, and the village moonsif shall consider such objection to be well grounded, he shall withdraw the members objected to and appoint others to serve in their stead.

Challenged members to be withdrawn.

Sixth. When the parties may desire it, they shall each name two members, and the village moonsif shall name another person who may be unobjected to by the parties, to form the punchayet; but on all other occasions, the whole shall be nominated by the village moonsif; the practice of the parties naming two members each shall never be allowed when it can be avoided.

When the parties consent, each to name two members and the moonsif one; in other cases, the moonsif is to name the whole punchayet.

Parties naming two each, to be avoided if possible.

IV. *First.* The village punchayet, being formed as prescribed in the foregoing section, shall proceed to investigate the matter referred to them in conformity to the following rules:—

How the punchayet is to proceed.

Second. The village punchayet shall commence their proceedings by requiring from the parties an agreement in writing to abide by the decision of such punchayet, whose names shall be inserted in the agreement, which shall be witnessed

An agreement to be taken from the parties to abide by the decision of the punchayet.

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by the village moonsif and kurnum, and dated on the same day.

Vakeels to be relatives, servants, or dependents of the parties employing them. To be furnished with vakalutnamahs.

Third. Vakeels for plaintiffs and defendants shall be admitted to plead before village punchayets, provided that every person so appearing as a vakeel be a relative, servant, or dependent of the person by whom he may be employed, and provided he be furnished with a vakalutnamah describing his relation to his employer, and the matter in which he is empowered to act; such vakalutnamah shall be exhibited by the vakeel before he be permitted to do any act in the suit.

Plaint to be received in presence of the parties or their vakeels. What it is to contain.

Fourth. The parties being present in person or by vakeel, the village punchayet shall receive the written plaint of the complainant, which shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total amount or value of the property claimed, and all material circumstances which may elucidate the transaction.

Plaint to be read to the defendant. Answer to be required.

Fifth. The plaint shall be read to the defendant or his vakeel, and the defendant or his vakeel shall be required by the punchayet to give in his answer, either immediately, if he shall be prepared to deliver it, or on a day to be fixed, which shall not be later than one week from the reading of the plaint.

Answer to state every thing regarding the case: no further pleadings to be admitted.

Sixth. The defendant shall state in his answer all that he has to say regarding the case, and no further pleadings shall be admitted.

Exhibits and lists of witnesses to be then

Seventh. The village punchayet after the answer has been

Cl. 2. Sec. IV.—1. The omission to take *before a Punchayet* the agreement required by this clause is fatal to a decree passed by a Punchayet.—*S. U. Dy. 27th Jan.* 1837.

2. When one or more members of a Punchayet may die before the award is framed, the Punchayet must be considered as dissolved *de facto*, and the muchilka to have become null and void in law. If the parties apply for a new Punchayet, the surviving members of the old one will of course be eligible to sit upon it, and the new Punchayet is at liberty to avail itself of any depositions taken in writing before the old one, which are duly authenticated.—*C. O. S. U. 27th March* 1828.

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given in, shall receive from the plaintiff and defendant their exhibits and lists of their witnesses, and shall fix an early day for the trial, with reference to the convenience of the parties and witnesses respectively.

received and a day to be fixed for the trial.

Eighth. The village punchayet shall immediately communicate the lists of witnesses and the day fixed for the trial, to the village moonsif, who shall require the witnesses to be in attendance on that day.

List of witnesses and the day fixed for trial to be communicated to the village moonsif.

Ninth. The parties and witnesses being in attendance on the prescribed day, the village punchayet shall proceed to take the depositions of the witnesses in the manner usual in the caste to which they may respectively belong, on separate papers or cadjan leaves, in all cases in which the matter at issue may exceed the value or amount of twenty *Arcot* rupees; the deposition shall be read over to the witness, who shall then subscribe the deposition with his or her name, or mark.

How he is to proceed.
How the depositions of witnesses are to be taken.
In what cases to be committed to writing.

Tenth. In cases in which the matter at issue may be of smaller amount or value than twenty *Arcot* rupees, it shall be discretionary with the village punchayet to take the depositions of the witnesses in writing or not.

In other cases, the punchayet to use its discretion.

Eleventh. The village punchayets are authorized to cause an *oath* to be administered to witnesses in cases where they may deem it necessary.

The punchayet authorized to cause *oaths* to be administered to witnesses when necessary.

Twelfth. The village punchayets shall not put a question to any witness suggesting a particular answer, and shall, previous to the examination of a witness, inform him that they have authority to cause an *oath* to be administered to him, when they may think he is not giving his evidence correctly, which authority the village punchayets shall exercise at their discretion.

Questions suggesting a particular answer not to be put.

Oaths to be administered to witnesses at the discretion of the punchayet.

Thirteenth. If the parties or either of them shall fail to appear in person or by vakeel at the time fixed for the trial, the village punchayet shall suspend the trial and report it to the village moonsif, who shall cause to be affixed in some conspicuous place of the village, a notice specifying that the suit will be tried on a given day, which shall not be less than five days from the date of the notice.

Trial to be suspended on the non-appearance of the parties or either of them.
To be reported to the village moonsif.
Notice to be fixed, what containing.

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Suit to be dismissed on the non-appearance of the plaintiff.

Fourteenth. If the plaintiff shall not appear at the time fixed in the notice, the village punchayet shall dismiss his suit, which shall not be revived unless the plaintiff shall shew good and sufficient cause for his absence.

Cause to be tried ex-parte on the defendant's refusal to answer the plaint or non-appearance.

Fifteenth. If the defendant shall refuse to answer the plaint, or shall not attend at the time fixed in the notice, the village punchayet shall proceed to give judgment on the plaintiff's vouchers and the evidence of his witnesses.

What circumstances to be reported to the village moonsif.

V. In cases where a witness shall neglect to attend, or attending shall refuse to give his testimony, or shall be otherwise guilty of disrespect to the village punchayet, as also where the evidence of a person is required who resides beyond the jurisdiction of the village moonsif, as also in the cases of persons whose testimony may be required, but whose rank or caste may render it improper to require their attendance, as also when the parties or their vakeels may be guilty of disrespect to the village punchayet, the punchayet shall report the circumstances to the village moonsif, who is hereby authorized and directed, on receiving such reports, to take the same measures for procuring the attendance or testimony of the witnesses, or for punishing the contempts, as he would have taken under Sections XV, XVI, and XIX, Regulation IV. 1816, if the circumstances represented had occurred before himself.

How he is to proceed.

When the decree is to be written.

VI. When both parties have been heard, and the whole of the evidence has been gone through, the village punchayet shall order the parties and witnesses to withdraw, and shall write their decree according to justice and right.

What the decree is to contain.

VII. The decree of the village punchayet shall contain the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read; it shall also contain an abstract statement of the principal grounds and reasons on which the decision may be passed; it shall specify the sum of money or the value of the personal property adjudged; the decree shall bear the signature or mark of the members of the punchayet, and shall be dated on the day on which it is passed.*

Copy of the decree to be delivered to each party.

VIII. Two copies of the decree shall be prepared by the village punchayet and shall be put under a sealed cover and

* See Act VIII of 1840.

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delivered to the village moonsif, who shall require the parties, together with the punchayet, to assemble immediately, or at a convenient day, not being later than three days from his receipt of the decree; the village moonsif shall open the seal in presence of the parties, and shall cause the kurnum to indorse on each copy of the decree the date of the delivery thereof, which shall be attested by the signature of the village moonsif, the kurnum, and any member of the punchayet; the village moonsif shall then cause the punchayet to deliver to each party in his presence a copy of the decree; but no communication shall be made to the village moonsif or to either party of the nature of the decree previously to its delivery.

Date of the delivery to be indorsed.

How to be attested.

Previous to delivery, no communication of the nature of the decree to be made.

IX. If either the plaintiff or defendant shall fail to appear in person or by vakeel to receive a copy of the decree, or having attended, shall refuse to receive a copy, the village moonsif shall cause the kurnum to indorse on the copy intended for such party, such omission or refusal, and the date; the village moonsif shall attest the same with his signature, which shall be witnessed by the kurnum and any member of the punchayet; the copy so indorsed shall be deposited with the village kurnum to be delivered to the party afterwards claiming it.

Non-appearance or refusal to receive a copy to be indorsed on it;

and copy so indorsed to be deposited with the kurnum.

X. The proceedings of the village punchayet shall be written either by one of the members or by the village kurnum, and no stamp paper need be used in plaint, answer, or any process.*

Proceedings of the punchayets to be written by one of the members or the kurnum.

Stamp paper not necessary.

XI. *First.* No appeal shall be permitted from decisions passed by village punchayets under this regulation; but if the village punchayet shall be guilty of gross partiality, it shall be at the option of either party to bring the matter by petition, upon stamp paper of the prescribed rate according to the amount of the suit, before the *judge of the zillah*.

No appeal allowed from the decrees of punchayets.

In cases of gross partiality, how the parties to proceed.

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* See Act VII of 1870.

XI.—The appeals under this section against the proceedings of Village Punchayet for partiality, lie to the Subordinate Judge or Principal Sudder Ameen, who should make a report of the case to the Civil Judge.—*C. O. S. U. 4th March* 1844, *No.* 88*C.*

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Petition only to be received if presented within the period limited.

Second. The petition shall not be received unless it be presented with the decree complained of, within thirty days after the date on which copies of the decree may have been furnished or tendered to the parties, or to their vakeels.

When received, execution of the decree to be stayed.

Third. If the petition be received, the judge shall order the execution of the decree to be stayed pending the inquiry.

Decree to be annulled by the *Provincial* Court on proof of partiality to their satisfaction.

Fourth. If the partiality charged against the punchayet shall be established to the satisfaction of the judge by the *oaths* of two credible witnesses at the least, he shall in every case, whatever the amount or value of the suit may be, submit his proceedings, with his opinion on the case, to the *Provincial Court of Appeal*, who, provided the charge be proved by such proceedings to their satisfaction, shall annul the decision, and the parties shall be at liberty to have recourse to another punchayet, or to any other competent jurisdiction.

Decision of a second punchayet agreeing with that of a former one in the same suit to be final.

Fifth. Provided, however, that where the decision of a second punchayet shall agree with the decision of a former punchayet in the same suit, it shall be final.

Petitions to the judge by whom to be presented.
Fee payable to the vakeel presenting them.

Sixth. Petition to the *judge of the zillah* under this section shall be presented by the parties in person, or by an authorized vakeel of the court, to whom a fee of four annas of a rupee shall be allowed, and no more; and the parties shall not be subjected to any other charge whatever.

Village moonsifs not to receive or refer to punchayets any suits for personal damages.

XII. Village moonsifs shall not receive or refer to a punchayet for trial, any suits for damages on account of personal injuries, or for personal damages of whatever nature.

Suits tried by village punchayets exempt from fees, stamp-duties, and all charges. Exception.

XIII. Suits tried by village punchayets shall be exempt from fees,* stamp duties, batta, and all charges of every description, except the cost of the paper or cadjan leaves on which the proceedings and decree may be written, the amount of which shall be inserted in the decree, and be levied from the party cast.

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* See Act VII of 1870.

Sec. XII.—1. All suits for damages are excluded from the cognizance of Punchayets except when referred to them.—*O. O. S. U. 19th March* 1824.

2. A Punchayet is wholly incompetent to enquire into the merits of a case finally decided by a decree of a Court.—*S. U. Pro. 24th Oct.* 1836, *on M. P. No.* 110. *Civ. Remem. p.* 16.

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XIV. Repealed by Act XXVIII of 1855.

By what rules they are to be guided with respect to the admission of obligations, deeds, and documents.

XV. In respect to the admission of obligations, deeds, and documents, the village punchayets shall be guided by the rules prescribed in section XXXIV., Regulation IV., 1816.

Village moonsifs to carry into execution the decrees of village punchayets. Proviso.

XVI. *First.* Decrees of village punchayets, in cases referred to them under this regulation, shall be carried into execution by the village moonsif under the rules prescribed in section XXX. Regulation IV. 1816, provided the amount or value of the sum of money or other personal property adjudged shall not exceed one hundred *Arcot* rupees.

In what cases the decrees are to be carried into execution by the district moonsif.

Second. In suits for sums of money or other personal property, the amount or value of which shall exceed one hundred, but not exceed two hundred *Arcot* rupees, the decrees of village punchayets shall be carried into execution by the district moonsifs on the written application of the party praying execution of the judgment.

In all other cases the decrees of village punchayets to be carried into execution by the *zillah* judge.

Third. In all other cases, the decisions of village punchayets shall be carried into execution by the *zillah* judge in the mode prescribed by the regulations.

Petitions to the judge praying execution of the decrees of village punchayets to be written on stamped paper.

XVII. Petitions to the *judge of the zillah* praying execution of the decisions of village punchayets shall be written on stamped paper of the prescribed rate according to the amount decreed, and shall be presented by the parties in person, or by an authorized vakeel of the court, to whom a fee of four annas of a rupee shall be allowed, and no more; and such application shall not be subjected to any other charge whatever.

Fee to the vakeel presenting the petition.

Cls. 1 and 2, Sec. XVI.—1. Any observations which may be necessarily recorded by Zillah Judges on the reports of Punchayets submitted by Village Moonsiffs should be communicated through the District Moonsiff, in order that the latter officer, by having his attention directed to the several instances in which these lower judicatories may have exceeded their authority, may be led to exercise with circumspection the authority vested in him by law in regard to the execution of their decrees.—*C. O. S. U.*, 1*st Dec.* 1817.

2. Upon a question raised as to whether District Moonsiffs can execute the decrees of Village Punchayets to the extent of their present jurisdiction, the late Sudr. Court replied in the negative, the law not having authorized such a proceeding.—*S. U. Dy.* 13*th Sept.* 1837. *Cir. Rev. p.* 435.

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Members of punchayets liable to prosecution for corruption. Punishment on conviction.

XVIII. *First.* Any member or members of village punchayets shall be liable to prosecution in the *Zillah* Court for corruption in the discharge of their trust by either party in a suit which may have been referred to such punchayet, and upon proof of the charge to the satisfaction of the *zillah* judge, he shall adjudge the offender or offenders to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit; but members of village punchayets shall not be liable to be prosecuted for want of form, or for error in their proceedings or judgment; nor shall any process whatever be issued against a member or members of a village punchayet, who may be charged with corruption, unless the judge shall be previously satisfied by sufficient evidence that there is probable cause to believe that the charge is well founded, and unless the charge shall be preferred within three months from the date of the act of corruption complained of.

Not liable to prosecution for errors or want of form.

Proviso under which process is to be issued on a charge of corruption.

The party by whom or for whom the corruption is practised to be fined.

Second. The *zillah* judge shall further fine the party by whom, or for whom, the corruption may have been practised in the suit, provided he shall have assented to such corruption, in a sum equal to the value of the thing or sum of money which any member or members of such village punchayet may be proved to have so corruptly received.

If the corruption be not proved, the accused to have damages and costs awarded to him or them, and the party making the groundless charge to be fined.

Third. If the corruption charged against any member or members of such village punchayet shall not be proved to the satisfaction of the *zillah* judge, he shall award full costs and such damages to the member or members complained against as may appear to him to be equitable, and he shall levy a fine from the party making such groundless charge, not exceeding the value of the thing or sum of money charged to have been corruptly received.

XIX. Rescinded by Section II., Regulation IX., 1828.

A copy of this regulation to be lodged with the village kurnum.

XX. A copy of this regulation shall be lodged with and preserved by each village kurnum, for the information of the village moonsifs and members of village punchayets.

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A. D. 1816. REGULATION VI.

A REGULATION *for reducing into one Regulation the Rules which have been passed regarding the Office of Native Commissioners, for modifying and extending their Powers in the Trial and Decision of Civil Suits, and for authorizing them, under the designation of District Moonsifs, to discharge certain additional Duties.*

Passed on the 17*th May* 1816.

WHEREAS the rules which have been enacted for constituting the office of moonsifs or native commissioners, for the trial and decision of causes of a certain amount, have appeared in some instances to require revision; and whereas it is expedient, with the view of expediting the trial and decision of civil suits, to extend the jurisdiction of the said moonsifs, and to authorize the judges of the Zillah Courts to employ them in the execution of certain additional duties; and whereas it will contribute to the public convenience to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of moonsifs, and to reduce into one regulation the provisions applicable to the office of district moonsifs, the following rules have been enacted:— Preamble.

II to IV. Repealed by (*Madras*) Act II of 1869.

V. The number of district moonsifs for each zillah shall be fixed by Government. The rest repealed by *(Madras)* Act II of 1869. The number of moonsifs to be fixed by Government.

VI. The zillah judges shall recommend to the *Provincial* Courts the persons whom they may deem fit for the office of district moonsif, but no person shall be authorized to officiate as a district moonsif without the previous sanction of the *Provincial* Court. No person to officiate as district moonsif without the sanction of the *Provincial* Court, on the recommendation of the zillah judge.

VII. *First.* Whenever a zillah judge shall see cause for the removal of a district moonsif, the judge shall report the circumstances of the case, with his opinion, to the *Provincial* Court, who will pass such order on the report as may appear to be proper. Mode of proceeding for the removal of moonsifs from office.

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Zillah judges in certain cases to suspend moonsifs from office.

Second. Whenever a district moonsif may be guilty of exaction, or of any other gross act of misconduct, the judge is authorized to suspend him from his office, but he shall report the circumstances of the case without delay to the *Provincial* Court.

Third. Repealed by Sec. I. Act XIX of 1855.

Moonsifs to be dismissed only by the *Provincial* Courts.

Fourth. No district moonsif shall be removed from his office, unless the *Provincial* Court shall be satisfied that there is sufficient cause for his removal.

Moonsifs may be sued for corruption, and are liable to costs and damages.

VIII. *First.* District moonsifs shall be liable to an action in the Civil Courts for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority, and upon proof of the charge to the satisfaction of the judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable.

Moonsifs liable to criminal prosecutions and to fine and imprisonment.

Second. District moonsifs shall also be liable to a criminal prosecution for extortion, or other acts of oppression committed by them in the discharge of their duty, and on conviction before the *Court of Circuit*, shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no moonsif shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a moonsif who may be charged with extortion or any oppressive or unwarranted act of authority, unless the judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded.

Process not to be issued without previous inquiry into the charge.

District moonsifs to be furnished with a sunnud, and to take and subscribe an oath or solemn declaration.

IX. Every person who may in future be appointed to the office of district moonsif shall be furnished by the judge with a sunnud drawn up according to the form No. 1 of the Appendix to this Regulation, and previously to entering upon the duties of his office, he shall take and subscribe an oath according to the form prescribed in No. 2 of the Appendix. The judge, however, is empowered, in all cases in which he may deem it expedient, to exempt such moonsif from taking the oath, and to cause him to subscribe a solemn declaration to the same effect.

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X. Whenever a sunnud may be granted to a district moonsif under the preceding section, a copy of it under the official seal and signature of the judge shall also be delivered to him, in order that it may remain permanently affixed in some conspicuous place in his cutcherry.

Copy of the sunnud to be affixed in their cutcherries.

XI. *First.* The persons who may be invested with the powers of district moonsif under this regulation are empowered to receive, try, and determine all suits preferred to them against any native inhabitant of their respective jurisdictions, *under the following limitations:*—

Amount of suits cognizable by district moonsifs.

Second. For land exempt from the payment of rent in money or in kind, either to Government or to any person representing Government and receiving its dues, the annual produce of which land shall not exceed *twenty Arcot* rupees.

Third. For land subject to the payment of rent in money or in kind, either to Government or to any person representing Government and receiving its dues, the annual produce of which land shall not exceed *two hundred Arcot* rupees.

Fourth. For houses, gardens, or any real property not of the descriptions before mentioned, the value of which shall not exceed *two hundred Arcot* rupees.

Fifth. For sums of money or other personal property, the amount or value of which shall not exceed *two hundred Arcot* rupees.

Sixth. Provided that in the cases specified in the preceding clauses of this section, the cause of action have arisen within twelve years previous to the institution of the suit, or that the plaintiff do shew by clear and positive proof, either that he had demanded the money or matter in question, and that the defendant had admitted the justice of the demand, or that he had directly preferred his claim within the period above mentioned to a competent authority, and in such case, that he assign satisfactory reasons to the moonsif why he did not proceed in the suit, or prove that from minority or other good and sufficient cause he was precluded from obtaining redress.

No such suits to be entertained when the cause of action shall have arisen twelve years before the commencement of the suit.
Exceptions to the rule.

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XII. to XXX. Repealed by Act X of 1861.

XXXI. and XXXII. Repealed by (*Madras*) Act II. of 1869.

XXXIII. to XL. Repealed by Act X. of 1861.

XLI. Rescinded by Regulation IX. of 1828.

XLII. Repealed by Act X. of 1861.

XLIII. Repealed by Section II. (*Madras*) Act IV of 1863.

XLIV. to XLVIII. Repealed by Act X. of 1861.

XLIX. Repealed by Act XVII. of 1862.

L. Rescinded by Act V. of 1835.

LI. and LII. Repealed by Act X. of 1861.

LIII. Repealed by (*Madras*) Act II. of 1869.

LIV. Repealed by Act X. of 1861.

LV. Repealed by (*Madras*) Act II. of 1869.

LVI. to LVIII. Repealed by Act X. of 1861.

LIX. Rescinded by Section VII. Regulation II of 1834.

LX. & LXI. Repealed by Act X. of 1861.

By what laws the decisions of moonsifs are to be regulated.

LXII. *First.* In all cases of inheritance of or succession to landed property, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to regulate the decisions of the district moonsifs. The rest repealed by (*Madras*) Act V. of 1867.

Second. Repealed by Act X. of 1861.

APPENDIX.

No. 1.

Form of Sunnud to be granted to persons appointed to the office of District Moonsif.

I, A. B., judge of the Zillah of———, do hereby appoint you, C. D., to the office of district moonsif of———; you are to hold your cutcherry at———, and are to affix this sunnud, or a copy of it duly authenticated, in some conspicuous place in the cutcherry; under the rules now in

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force you will receive the remuneration to which you may be entitled for the trial and decision of suits. You shall not receive any valuable consideration from any parties or other persons on account of the institution or trial, the proceedings, process, or decision of any suit before you, except the institution fee. You are to hear and determine all suits cognizable by you, and to execute all other duties entrusted to you in your capacity of district moonsif, in strict conformity with the rules prescribed in the regulations now in force, or which may hereafter be enacted.

No. 2.

Form of Oath to be administered to persons appointed to the office of District Moonsif.

I, A. B., appointed to the office of district moonsif of—— do solemnly swear that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favour, or affection; that I will not, directly or indirectly, receive, or knowingly allow any other person to receive, any money, effects, or property on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute. I will strictly adhere to all the rules prescribed for my guidance, and I will in all respects truly and faithfully execute the trust reposed in me.

Nos. 3, 4, 5,

Forms of Registers and Reports.—Rescinded by Regulation IX., 1828.

1. In nominating a person for the office of District Moonsiff, the Civil Judge is to specify in a tabular form, the name, age, religion, and past services of such person; and in the event of his not having passed the required examination, the grounds upon which he is recommended in preference to any passed candidate in the district.—Sudr. Pro. 4th November 1844. H. C. Civ. R. P.

2. In nominating persons for the office of District Moonsiff preference is to be given to the claims of the candidates who have passed the prescribed examination, if they are otherwise qualified for the office.—*Ib.* 12th March 1860.

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3. The High Courts are authorized to make from time to time such interchanges among District Moonsiffs as they deem called for, but no native Judicial Officer will be transferred to a District with the language of which he is not fully conversant.—*Ib.* 20th October 1852.

4. District Moonsiffs are liable to dismissal for the following acts:—

i.—For borrowing money from suitors in their Court.—C. O. S. U. 26th Decr. 1836, No. 41A.

ii.—For employing their own relatives who are not public servants in any official capacity under them, or allowing them otherwise to interfere with the business of their Court. *Ib.* 24th Sept. 1840, No. 58.

iii.—For declaring in Court judgments drawn up under their dictation by their ministerial subordinates and for recording the purport in the diary previous to the preparation of their decree in their own handwriting.—*Ib.* 20th April 1844, No. 89A.

iv.—For failing to report to the Civil Judge each instance in which he may leave the Court station availing himself of the leave of 5 days. —*Ib.* 14th Octr. 1845, No. 98.

5. Uncovenanted Judicial officers legally empowered to exercise judicial functions, are prohibited from lending money to any person within their jurisdiction. C. O. S. U., 4th Dec. 1845, No. 101.

6. When it came to the notice of the late Sudder Court that a District Moonsiff had borrowed money from the near relative of a suitor in his Court, it was ruled that it is highly objectionable in a Moonsiff to incur any pecuniary obligation to any person interested, though he may not be the actual party, in a suit filed in his Court. S. Pro., 6th Feby. 1837.

7. Native Revenue and Judicial servants are prohibited from raising public subscriptions for building choultries or other similar purposes. C. O. S. U. 4th March 1851, No. 121B.

8. The High Court will not interfere in the matter of any complaint against a District Moonsiff, unless the case be expressly reported by the Civil Judge for their orders. *Ib.* 21st April 1860.

9. No District Moonsiff shall acquire by private purchase, bargain, mortgage, transfer, or by any means directly or indirectly, any landed property, or interest in any landed property, within the district in which he may be employed, until he shall have obtained the sanction of the Civil Judge. Where land, or interest in land, may descend on a District Moonsiff by inheritance, he is required to report the circumstance; and on his appointment, he is also required to report what land, or interest in land, he may possess. C. O. S. U. 7th Jan. 1850. No. 116A.

10. As soon as District Moonsiffs are furnished with translations of every new enactment, they are to have its provisions explained to the inhabitants at their several stations by beat of tom tom and to cause a copy of it to be affixed in some conspicious part of their offices.— C. O. S. U. 22nd Oct. 1835.

11. Every Judicial Officer who may quit his station, on account of leave of absence, sick certificate or otherwise, shall report the date of his departure and his return. C. O. S. U., 10th May 1824.

12. On occasions of holydays or otherwise when a Judicial Officer can be absent from his station without impediment to the performance of his duty, he may be absent for a period not exceeding five days, making report to the Sudder Court. Or. of Govt. 16th Novr. 1841.

13. But absence from station for more than five days will entail not only loss of allowances, but loss of appointment. *Ib.* Extended to Native Judicial Officers by C. O. S. U., 14th Oct. 1845, No. 98.

14. Sunday need not be reckoned among the five days absence from station permitted by the order of Government, dated 16th Novr. 1841. —C. O. S. U., 16th July 1855, No. 136C.

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15. But the adjournment of the Courts forms no ground for Judicial Officers absenting themselves from their statons beyond five days. —*Ib.*

16. In forwarding to the Sudder Court applications for leave of absence from Native Judicial Officers, the date and period of their last leave and the time they have held their office should be specified. —*Ib.* 8th June 1844, No. 89B.

17. When leave is granted to a Moonsiff, the Judge will explain the state of the business in the Court, and whether it would be desirable to make arrangements for supplying his place during his absence. —*Ib.* 20th April 1850, No. 116D.

18. The Judges will not sanction an extension of leave; applicants should be careful to ascertain the exact period during which their absence is called for, and submit a request in the first instance accordingly.—*Ib.* 25th Jany. 1855, No. 134E.

19. District Moonsiffs are competent to receive and try suits for sums of money or other personal property under ten rupees in value. S. C. Pro. 16th April 1860.

20. A District Moonsiff is competent to try a suit instituted against a Collector, arising out of an act done in his official capacity.—*Ib.*

21. When a suit is instituted in the court of a District Moonsiff against the Government, the summons should be served on the Government Pleader of the Civil Court.—*Ib.* 17th January 1860.

22. District Moonsiffs are competent to receive and try Pauper suits, without reference by the Civil Judge, when the value of the matter in dispute is within their jurisdiction.—*Ib.* 19th March 1860.

23. District Moonsiffs may entertain suits for the dismissal of kuznums under Sec. V, Reg. XXIX of 1802. Dec. S. U. No. 62 of 1854. 11th Sep. 1854, p. 108.

24. Moonsiffs are required to dispose of suits according to the order of the file and to explain when they deviate therefrom. C. O. S. U., 20th Sept. 1824.

25. They are incompetent to deviate therefrom without the previous sanction of the Zillah Judge. *Ib.* 4th April 1825.

26. District Moonsiffs are required to pass not less than 20 decrees on the merits during each month exclusive of decrees in small causes. S. C. Pro. 2nd March 1854 C. R. B.

27. Suits wherein the decisions are final under this section should be taken up when ready without reference to their order on the file, and Moonsiffs are required to explain in their periodical reports the reason of the delay in disposing of such suits, which may be pending for more than six months. C. O. S. U., 22nd July 1854, No. 132.

28. Zillah Judges should from time to time examine suits where the decisions of the Moonsiffs are final, and with the view of determining that the authority vested in the Moonsiffs is exercised in a satisfactory manner, should refer to such decisions as are appealable, and ascertain whether appeals are frequent, and whether the judgments of the Moonsiffs are usually confirmed. Cir. Let. S. U., 22nd May 1846.

29. Civil Judges should bring to notice of the High Court the case of any District Moonsiff who from age, or other cause, may be disqualified for the active and efficient performance of his duties. C. O. S. U., 17th June 1851. *Ib.*

30. Zillah Judges are authorised occasionally to visit, with the previous permission of the Sudder Court, Moonsiffs' stations, for the purpose of establishing a more efficient check over the operation of

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the District Moonsiffs, and of learning the estimation in which individual Moonsiffs are held by the native community. C. O. S. U. 23rd March 1838, No. 50.

31. Whenever the Judge of a Zillah or a Subordinate Court may deem it necessary to proceed to the station of a District Moonsiff for the purpose of making a special enquiry into the conduct of the Moonsiff, he shall be at liberty to do so without obtaining the previous sanction of the Sudder Court. C. O. S. U. 15th May 1847, No. 111A.

32. Native public servants accompanying the Judge on such occasions are entitled to draw batta equal to half the amount of their salary for the period of their absence from their own station. *Ib.* 9th Sept. 1847, No. 112.

33. In the event of any District Moonsiff's file being unusually low, the Civil Judge is to make enquiry for the purpose of ascertaining whether the circumstance arises from unhealthiness of the station, the Moonsiff's incompetency, or any ascertainable cause susceptible of a remedy. Dy. S. Pro. 20th Sept. 1824. C. R. P.

34. A District Moonsiff enforcing an illegal decision passed by a Village Moonsiff would render himself amenable to some one of the Clauses of Sec. VII, according to the culpability of his act. C. O. S. U., 4th March 1817.

35. District Moonsiffs are amenable to prosecution by the parties aggrieved for unwarrantable acts of authority.—*Ib.*

36. Any observations which it may be found necessary to record on the subject of the reports forwarded by the Village Moonsiffs and Punchayets should be communicated through the District Moonsiff, in order that the latter officer by having his attention directed to the several instances in which these lower judicatories have exceeded their authority, may be led to exercise with circumspection, the authority vested in him by the Regulations in regard to the execution of their decrees.—*Ib.* 1st Decr. 1817.

37. Prior to the execution of any decree passed either by a Village Moonsiff or a Village Punchayet, the District Moonsiff should by reference to the Monthly Reports of the Village Moonsiff, be careful to satisfy himself, that the suit is neither for real property, nor for personal damages, and that the interest has been calculated agreeably to the Regulations.—*Ib.*

38. District Moonsiffs are bound to treat all public officers, as well as other persons appearing before their Courts, with the attention and respect due to their station in society. C. O. S. U., 25th Aug. 1823.

39. District Moonsiffs are competent to grant copies of exhibits if application be made before the originals have been sent to the Civil Court, and that they are also competent to return an original document to the party by whom it was produced upon his providing the expense of making an authenticated copy of the same for deposit with the record of the suit.—S. N. Pro. 5th February 1861.

40. In Regulation IV of 1816 no provision is made for the enforcement of a decree of a Village Moonsiff, by any authority superior to the District Moonsiff. A Zillah Judge is therefore incompetent to enforce the decree of a Village Moonsiff. C. O. S. U., 24th Decr. 1829.

41. Moonsiffs are required to send to the Judge with the records of the suits before them, the original draft in their own handwriting of their decrees. C. O. S. U., 20th May 1831.

42. District Moonsiffs are required to keep a record of all receipts and payments in their accounts, duly attested by their own signature. C. O. S. U. 15th Dec. 1834, No. 7.

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A. D. 1816. REGULATION VII.

A REGULATION *for authorizing District Moonsifs to assemble District Punchayets for the Adjudication of Civil Suits for Real and Personal Property, without limitation as to Amount or Value, within their respective jurisdictions; and for defining the Powers and Authority to be vested in such District Punchayets.*

Passed on the 17th May 1816.

IT being desirable, with a view to diminish the expense of litigation, and to render the principal and more intelligent inhabitants useful and respectable by employing them Preamble.

43. In cases of doubt, District Moonsiffs should refer for instructions to the authority to whom in the matter involving doubt they are in immediate subjection. C. O. S. U. 6th Novr. 1843, No. 82H.

44 Uncovenanted Judges may at their option, sign their names in the English, or in any other character, but shall always sign in full, instead of employing initials, and use only one character on all occasions, instead of having recourse to different characters at different times. C. O. S. U. 13th Novr. 1843, No. 83.

45. All Judicial Officers are prohibited from giving over or assuming charge of their offices on the Sabbath. When any officer may rejoin his station on the expiration of his leave on a Sunday, he will not resume charge of his office till the following Monday, but will report that he joined his station on the date of his actual return, and that the day being Sunday, resumed charge of the office on the day following. C. O. S. U. 14th Octr. 1852, No. 126B.

46. The appointment of relatives of a Judicial Officer (European or Native) to the office of Pleader in the Court to which he belongs, can under no circumstances be permitted. C. O. S. U. 18th April 1853, No. 126J.

47. The disposal by District Moonsiffs of suits to which their relations are parties is very objectionable. All such suits (except small causes) must be referred by District Moonsiffs for the orders of Civil Courts.—H. C. P. 30th April 1867. C. R. P.

48. District Moonsiffs may transmit process *direct* to any Civil Court for service by that Court, and also to any other Court, without the intervention of the Civil Court. S. C. Pro., 17th August 1860.

49. But where the person to be served is an officer or soldier, or is residing within the jurisdiction of the Supreme Court, the Moonsiff is to forward the process through the Civil Judge.—*Ib.*

50. Any native Judge sufficiently acquainted with English to be able to write a clear and intelligible decision in that language, may write his judgments in English.—*Ib.* 16th Jan. 1861.

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in administering justice to their neighbours, that civil suits between the native inhabitants of the territories subject to the Presidency of Fort St. George should be referred for adjudication to assemblies denominated punchayets, and that for the purpose of facilitating such reference, the district moonsifs should be authorized to summon a punchayet, on the application of both parties in a suit, and to refer such suit to be heard, tried, and determined by such punchayet; and it being deemed expedient to protect members of district punchayets from being called to account for their conduct in the performance of these duties, except on charges of corruption, the Governor in Council has enacted the following rules.

District moonsifs authorized to summon punchayets within their respective jurisdictions for the decision of suits for real and personal property of any amount or value.

II. *First.* District moonsifs are hereby declared to be authorized to summon punchayets within their respective jurisdictions for the decision of suits for real and personal property, without limitation as to amount or value, in the two following cases.

Second. In suits where both plaintiff and defendant may jointly agree that the matter at issue shall be determined by a district punchayet without appeal, and may prefer a request in writing to the district moonsif to summon a punchayet, whether he be the moonsif of the district in which the parties reside, or of any other district;—or where one party having preferred a request in writing to the district moonsif to summon a punchayet, the other party being an inhabitant of the same district, on being summoned by the district moonsif, shall attend and voluntarily give his assent in writing to the district moonsif, agreeing to that mode of trial.

Proviso.

No such suits to be entertained when the cause of action shall have arisen twelve years before the commencement of the suit,

Third. Provided, however, that in the cases specified in the preceding clause of this section, the cause of action have arisen within twelve years previous to the institution of the suit, or that the plaintiff do shew by clear and positive proof either that he had demanded the money or matter in question and that the defendant had admitted the justice of the demand, or that he had directly preferred his claim within the period above mentioned to a competent authority, and in such case that he assign satisfactory reasons to the punchayet why he did not proceed in the suit, or prove that

Exception to the rule

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from minority, or other good and sufficient cause, he was precluded from obtaining redress.

III. *First.* The district punchayet shall always consist of an odd number, never less than five nor more than eleven, and the majority shall decide. The district punchayet shall sit at the station where the district moonsif's court is held.

Punchayet to consist of an odd number: majority to decide. Where to sit.

Second. The district punchayet shall be composed of the most respectable inhabitants of the district, who shall be called upon to serve in rotation, and any native inhabitant refusing to serve on a district punchayet shall be liable to be fined, at the discretion of the district moonsif, in a sum not exceeding ten *Arsot* rupees, which shall be levied, if necessary, by the district moonsif under the provisions of Section LI. Regulation VI. 1816.

Of whom to be composed.

Refusing inhabitant liable to fine.

How to be levied.

Third. Any respectable inhabitant of a neighbouring district may be placed on district punchayet, if he be willing to undertake the duty.

Inhabitant of a neighbouring district may be placed on a punchayet.

Fourth. When the parties in suits are of different castes or professions, the district moonsif shall, in all practicable cases, name an equal number of persons of the caste or profession to which each party may belong, to compose a part of the district punchayet, and shall complete the punchayet by the selection of a person or persons belonging to a caste or profession different from that of both the parties.

When the parties are of different castes, how the punchayet is to be formed.

Fifth. If either party shall object to any one or more of the members nominated to compose the district punchayet, and the district moonsif shall consider such objections to be well grounded, he shall withdraw the members objected to and appoint others to serve in their stead.

Challenged members to be withdrawn.

Sixth. When the parties may desire it, they shall each name two members, and the district moonsif shall name another person, who may be unobjected to by the parties, to form the punchayet; but on all other occasions the whole shall be nominated by the district moonsif. The practice of the parties naming two members each shall never be allowed when it can be avoided.

When the parties consent, each to name two members and the moonsif one; in other cases the moonsif is to name the whole punchayet.
Parties naming two each to be avoided if possible.

IV. *First.* The district punchayet, being formed as prescribed in the foregoing section, shall be assembled by the

How the punchayet is to proceed.

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written summons of the district moonsif, and shall proceed to investigate the matter referred to them in conformity with the following rules.

An agreement to be taken from the parties to abide by the decision of the punchayet.

Second. The district punchayet shall commence their proceedings by requiring from the parties an agreement in writing to abide by the decision of such punchayet, whose names shall be inserted in the agreement, which shall be witnessed by the district moonsif and any two respectable inhabitants and dated on the same day.

Vakeels to be relatives, servants, or dependents of the parties employing them. To be furnished with vakalutnamahs.

Third. Vakeels for plaintiffs and defendants shall be admitted to plead before district punchayets, provided that every person so appearing as a vakeel be a relative, servant, or dependent of the person by whom he may be employed, and provided he be furnished with a vakalutnamah describing his relation to his employer and the matter in which he is empowered to act, and such vakalutnamah shall be exhibited by the vakeel before he be permitted to do any act in the suit.

Plaint to be received in presence of the parties or their vakeels. What it is to contain.

Fourth. The parties being present in person or by vakeel, the district punchayet shall receive the written plaint of the complainant, which shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the value or amount of real or personal property claimed, and all material circumstances which may elucidate the transaction.

Cl. 2, Sec. IV.—1. The omission to take before a Punchayet the agreement required by this clause is fatal to a decree passed by a Punchayet.—*S. U. Dy. 27th Jany.* 1837.

2. When one or more members of a Punchayet may die before the award is framed, the Punchayet must be considered as dissolved *de facto*, and the muchilka to have become null and void in law. Should the parties apply for a new Punchayet, the surviving members of the old one will be at liberty to sit upon it, and the new Punchayet is at liberty to avail itself of any depositions taken in writing before the old one, which are duly authenticated.—*C. O. S. U. 27th March* 1828.

3. A razeenamah may be admitted in a cause before a Punchayet as well as in one before any other tribunal. The submission to the award of a Punchayet is by consent of both parties, therefore it may be withdrawn by consent of the same, and the muchilka to abide by the award becomes void of course.—*C. O. S. U. 28th Feby.* 1828.

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Fifth. The plaint shall be read to the defendant or his vakeel, and the defendant or his vakeel shall be required by the punchayet to give in his answer, either immediately, if he shall be prepared to deliver it, or on a day to be fixed, which shall not be later than one week from the reading of the plaint.

Plaint to be read to the defendant.
Answer to be required.

Sixth. The defendant shall state in his answer all that he has to say regarding the case, and no further pleadings shall be admitted.

Answer to state everything regarding the case: no further pleadings to be admitted.

Seventh. The district punchayet, after the answer has been given in, shall receive from the plaintiff and defendant their exhibits and lists of their witnesses, and shall fix an early day for the trial, with reference to the convenience of the parties and witnesses respectively.

Exhibits and lists of witnesses to be then received, and a day to be fixed for the trial.

Eighth. The district punchayet shall immediately communicate the lists of witnesses and the day fixed for the trial to the district moonsif, who shall require the witnesses to be in attendance on that day.

Lists of witnesses and the day fixed for trial to be communicated to the district moonsif.

Ninth. The parties and witnesses being in attendance on the prescribed day, the district punchayet shall proceed to take the depositions of the witnesses, in the manner usual in the caste to which they may respectively belong, on separate papers or cadjan leaves, in all cases in which the matter at issue may exceed the value or amount of one hundred *Arcot* rupees; the deposition shall be read over to the witness, who shall then subscribe the deposition with his or her name or mark.

How he is to proceed.
How the depositions of witnesses are to be taken.
In what cases to be committed to writing.

Tenth. In cases in which the matter at issue may be of smaller amount or value than one hundred *Arcot* rupees, it shall be discretionary with the district punchayet to take the depositions of the witnesses in writing or not.

In other cases the punchayet to use its discretion.

Eleventh. The district punchayets are authorized to cause an *oath* to be administered to witnesses in cases where they may deem it necessary.

The punchayet authorized to cause an *oath* to be administered to witnesses when necessary.

Twelfth. The district punchayets shall not put a question to any witness suggesting a particular answer, and shall, previous to the examination of a witness, inform him that they have authority to cause an *oath* to be administered to

Questions suggesting a particular answer not to be put.
Oaths to be administered to witnesses at the discretion of the punchayet.

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him when they may think he is not giving his evidence correctly, which authority the district punchayets shall exercise at their discretion.

Trial to be suspended on the non-appearance of the parties or either of them. To be reported to the district moonsif. Notice to be fixed what containing.

Thirteenth. If the parties, or either of them, shall fail to appear, in person or by vakeel, at the time fixed for the trial, the district punchayet shall suspend the trial and report it to the district moonsif, who shall cause to be affixed, in some conspicuous place of the village wherein the defaulting party may reside, a notice specifying that the suit will be tried on a given day, which shall not be less than five days from the date of the notice.

Suit to be dismissed on the non-appearance of the plaintiff.

Fourteenth. If the plaintiff shall not appear at the time fixed in the notice, the district punchayet shall dismiss his suit and award him to pay all the expenses which may have been incurred by the defendant and by the witnesses of both parties in their attendance on the punchayet, and the sum so awarded shall be recovered from the property of the defaulting plaintiff in mode prescribed in Section XLVI., Regulation VI., 1816, unless he shall immediately pay the amount.

Cause to be tried ex-parte on the defendant's refusal to answer the plaint or non-appearance.

Fifteenth. If the defendant shall refuse to answer the plaint, or shall not attend at the time fixed in the notice, the district punchayet shall proceed to give judgment on the plaintiff's vouchers and the evidence of his witnesses.

What circumstances to be reported to the district moonsif.

V. In cases where a witness shall neglect to attend or attending shall refuse to give his testimony, or shall be otherwise guilty of disrespect to the district punchayet, [*as also when the evidence of a person is required who resides beyond the jurisdiction of the district moonsif,*] as also in the cases of persons whose testimony may be required but whose rank or caste may render it improper to require their attendance, as also when the parties or their vakeels may be guilty of disrespect to the district punchayet, the punchayet

How he is to proceed.

shall report the circumstances to the district moonsif, who is hereby authorized and directed, on receiving such reports, to take the same measures for procuring the attendance or testimony of the witnesses, or for punishing the contempts, if the circumstances represented had occurred before himself.

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When the decree is to be written.

VI. When both parties have been heard and the whole of the evidence has been gone through, the district punchayet shall order the parties and witnesses to withdraw, and shall write their decree according to justice and right.

What the decree is to contain.

VII. The decree of the district punchayet shall contain the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read; it shall also contain an abstract statement of the principal grounds and reasons on which the decision may be passed; it shall specify the value or amount of the personal property, and the value or the annual produce of the real property adjudged; the decree shall bear the signature or mark of *the members* of the punchayet* and shall be dated on the day on which it is passed. If any claim shall appear to the district punchayet to be evidently litigious and vexatious, they shall adjudge suitable costs and damages against the plaintiff, payable to the defendant, and insert the same in their decree.

Copy of the decree to be delivered to each party.

VIII. Two copies of the decree shall be prepared by the district punchayet, and shall be put under a sealed cover and delivered to the district moonsif, who shall require the parties, together with the punchayet, to assemble immediately, or at a convenient day not being later than three days from his receipt of the decree; the district moonsif shall open the seal in presence of the parties, and shall endorse on each copy of the decree, the date of the delivery thereof, which shall be attested by his signature and the signatures of any two members of the punchayet; the district moonsif shall then cause the punchayet to deliver to each party in his presence a copy of the decree; but no communication shall be made to the district moonsif, or to either party, of the nature of the decree previously to its delivery.

Date of the delivery to be endorsed by the moonsif.
How to be attested.

Previous to the delivery, no communication of the nature of the decree to be made.

Non-appearance or refusal to receive a copy to be endorsed on it:

IX. If either the plaintiff or defendant shall fail to appear in person or by vakeel to receive a copy of the decree, or having attended shall refuse to receive a copy, the district moonsif shall endorse on the copy intended for such party, such omission or refusal, and, noting the date, shall attest the same with his signature, which shall be witnessed by

*See Act VIII of 1840.

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and copy so endorsed to be deposited with the district moonsif.

any two members of the punchayet; the copy so endorsed shall be deposited with the district moonsif to be delivered to the party afterwards claiming it.

Proceedings of the punchayet to be written by one or more of the members. Stamp paper not necessary.

X. The proceedings of the district punchayet shall be written by one or more of the members, and no stamp paper need be used in the plaint, answer, or any process.*

No appeal allowed from the decrees of punchayets. In cases of partiality, how the party is to proceed.

XI. *First.* No appeal shall be permitted from decisions passed by district punchayets under this regulation; but if the district punchayet shall be guilty of gross partiality, it shall be at the option of either party to bring the matter by petition, upon stamped paper of the prescribed rate according to the amount of the suit, before the judge of the zillah.

Petition only to be received if presented within the period limited.

Second. The petition shall not be received, unless it be presented with the decree complained of, within thirty days after the date on which copies of the decree may have been furnished or tendered to the parties or to their vakeels.

When received, execution of the decree to be stayed.

Third. If the petition be received, the judge shall order the execution of the decree to be stayed pending the inquiry.

Decree to be annulled by the Provincial Court on proof of partiality to their satisfaction.

Fourth. If the partiality charged against the punchayet shall be established to the satisfaction of the judge by the *oaths* of two credible witnesses at the least, he shall in every case, whatever the amount or value of the suit may be, submit his proceedings, with his opinion on the case, to the *Provincial Court of appeal*, who, provided the charge be proved by such proceedings to their satisfaction, shall annul the decision, and the parties shall be at liberty to have recourse to another punchayet or to any other competent jurisdiction.

Decision of a second punchayet agreeing with that of a former punchayet in the same suit to be final.

Fifth. Provided, however, that where the decision of a second punchayet shall agree with the decision of a former punchayet in the same suit, it shall be final.

Petitions to the judge. By whom to be presented. Fee payable to the vakeel presenting them.

Sixth. Petitions to the judge of the zillah under this section shall be presented by the parties in person, or by an authorized vakeel of the court, to whom a fee of four annas of a rupee shall be allowed, and no more; and the parties shall not be subjected to any other charge whatever.

* See Act VII of 1870.

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XII. The district moonsifs shall not receive or refer to a punchayet for trial, any suit for damages on account of personal injuries, or for personal damages of whatever nature, without an order of reference to him from the zillah judge.

District moonsif not to receive or refer to punchayets any suits for damages. Exception.

XIII. Rescinded by Act XXVIII of 1855.

XIV. In all cases of inheritance of, or succession to, landed property, district punchayets shall be guided by the rules prescribed in Section LXII. Regulation VI., 1816.

By what rules to be guided in cases of inheritance of or succession to landed property.

XV. In respect to the admission of obligations, deeds, and documents, the district punchayets shall be guided by the rules prescribed in [Section XXXV. Regulation VI., 1816.]*

As also with respect to the admission of obligations, deeds, and documents.

XVI. *First.* Decrees of district punchayets, in cases referred to them under this regulation, shall be carried into execution by the district moonsif under the rules prescribed in Sections XLVI., XLVII., XLVIII., XLIX., [*and L.*]† Regulation VI., 1816; provided, first, that if the suit be for land of the description specified in Clause Second, Section XI., Regulation VI., 1816,‡ the annual produce of such land shall not exceed the sum of twenty *Arcot* rupees; secondly, that if the suit be for land of the description specified in Clause Third, Section XI., Regulation VI., 1816, the annual produce of such land shall not exceed two hundred *Arcot* rupees; and thirdly, that if the suit be for real property not of the description above mentioned, or for sums of money or other personal property, the value or amount of such property shall not exceed two hundred *Arcot* rupees.

District moonsifs to carry into execution the decrees of district punchayets. Proviso.

Second. In all other cases the decisions of district punchayets shall be carried into execution by the zillah judge in the mode prescribed by the regulations.

In all other cases the decrees of district punchayets to be carried into execution by the zillah judge.

XVII. Petitions to the judge of the zillah, praying execution of the decisions of district punchayets, shall be written upon stamped paper of the prescribed rate, according to the amount decreed, and shall be presented by the parties in person, or by an authorized vakeel of the court, to whom a fee of four annas of a rupee shall be allowed, and no more; and such application shall not be subjected to any other charge whatever.

Petitions to the judge praying execution of the decrees of district punchayets to be written on stamped paper. Fee to the vakeel presenting the petition.

* Repealed by Act X of 1861. † Rescinded by Act V of 1835.
‡ Repealed by Act X of 1861.

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Members of punchayets liable to prosecution for corruption.

XVIII. *First.* Any member or members of district punchayets shall be liable to prosecution in the Zillah Court for corruption in the discharge of their trust, by either party in a suit, which may have been referred to such punchayet, and upon proof of the charge to the satisfaction of the zillah judge, he shall adjudge the offender or offenders to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit; but members of district punchayets shall not be liable to be prosecuted for want of form, or for error in their proceedings or judgment; nor shall any process whatever be issued against a member or members of a district punchayet, unless the judge shall be previously satisfied by sufficient evidence, that there is probable cause to believe that the charge is well founded, and unless the charge shall be preferred within three months from the date of the act of corruption complained of.

Punishment on conviction.

Not liable to prosecution for errors or for want of form. Proviso under which process is to be issued on a charge of corruption.

The party by whom or for whom the corruption is practised to be fined.

Second. The zillah judge shall further fine the party by whom or for whom the corruption may have been practised in the suit, provided he shall have assented to such corruption, in a sum equal to the value of the thing or sum of money which any member or members of such district punchayet may be proved to have so corruptly received.

If the corruption be not proved, the accused to have damages and costs awarded to him, and the party making the groundless charge to be fined.

Third. If the corruption charged against any member or members of such district punchayet shall not be proved to the satisfaction of the zillah judge, he shall award full costs and such damages to the member or members complained against as may appear to him to be equitable, and he shall levy a fine from the party making such groundless charge not exceeding the value of the thing or sum of money charged to have been corruptly received.

Rates of institution fee to be levied in certain suits.

XIX. *First.* In suits preferred to district moonsifs for reference to district punchayets under the provisions of this regulation, district moonsifs are hereby authorized and directed to levy from the plaintiff an institution fee according to the following rates, viz.

1. On amount or value not exceeding one hundred *Arcot* rupees, one rupee.

2. On amount or value above one hundred, but not exceeding two hundred *Arcot* rupees, two rupees.

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3. On amount or value above two hundred, but not exceeding three hundred *Arcot* rupees, three rupees; and so on progressively, whatever the amount or value may be.

Second. In suits for land of the description specified in Clause Second, Section XI., Regulation VI., 1816, the institution fee shall be calculated on ten times the computed annual produce.

Third. In suits for land of the description specified in Clause Third, Section XI., Regulation VI., 1816, the institution fee shall be calculated on the estimated annual produce of such land.

Fourth. The amount of the fees directed to be levied under the preceding clauses shall be considered as forming a part of the costs to be paid by the party against whom the decree may be given.

The amount of fees so directed to be levied to form part of the costs payable by the party cast.

XX. *First.* Every witness attending to give evidence before a district punchayet shall be entitled to receive batta at a rate not less than one, nor more than four annas of a rupee per diem, from the date of his departure from his village to the day of his return; the rate of such batta to be determined by the district moonsif with reference to his situation in life.

Witnesses entitled to receive batta.

In what period to be received.

Rate to be determined by the district moonsif.

Second. The batta to witnesses shall be paid daily, under the orders of the district moonsif, by the party on whose behalf they may respectively be summoned.

Batta to witnesses to be paid daily.

By whom.

Third. The district moonsif shall levy from the party cast, and pay to the party in whose favour the decree may be given, the amount of batta which under this section he may have paid to the witnesses summoned on his behalf.

The batta to witnesses to be paid by the party cast.

Fourth. The amount of the batta to witnesses, together with the amount of the fee paid on the institution of the suit, shall be specified by the district moonsif on the back of the decree.

The amount of batta and institution fee to be specified on the back of the decree by the moonsif.

XXI. Rescinded by Section II. Regulation IX. 1828.

XXII. The fees to be levied under Section XIX. of this Regulation shall be transmitted to the zillah judge. Remainder rescinded by Act V. of 1835.

Institution fees to be transmitted to the judge.

Vide Notes to Regulation V. of 1816.

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A. D. 1816. REGULATION XIV.

A REGULATION *for amending and modifying the Rules which have been passed regarding the Office of Vakeel or Native Pleader in the Courts of Civil Judicature.*

Passed on the 26th October 18[illegible]

Preamble.

WHEREAS it has been deemed expedient to amend and modify the provisions applicable to the office of vakeel or native pleader; and to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of vakeels or native pleaders in the Zillah Courts and in the Provincial Courts; and whereas the speedy adjustment of disputes may be facilitated by empowering the authorized vakeels to receive certain fees for legal opinions furnished by them, and by vesting them with authority to act as arbitrators under the general regulations—the following rules have been passed by the Governor in Council, to be in force from and after the *first day of February* 1817, throughout the provinces immediately subject to the Presidency of Fort St. George.

II. Repealed by (*Madras*) Act II of 1869.

The Sudder Adawlut and the *Provincial Courts* empowered to appoint the vakeels of their respective courts.

III. *First.* The Sudder Adawlut and the several *Provincial* Courts are empowered to appoint to the office of vakeel in their respective courts such a number of persons, duly qualified for the situation, as may from time to time appear to them to be necessary.

Vakeels of the *Zillah* Courts to be nominated by the judges of those courts for the sanction of the *Provincial* Courts.

Second. Whenever the appointment of a vakeel may be requisite in any of the *Zillah* Courts, the judge of such *zillah* shall nominate, for the approbation of the *Provincial Court of the division*, some person duly qualified for the situation, and shall communicate to the *Provincial* Court such information as he may have obtained regarding the age, capacity, character, education, and past employment of the individual whom he may recommend, and no person shall be authorized to practice as a vakeel in any *Zillah* Court without the previous sanction of the *Provincial* Court.

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IV. *First.* Persons who may hereafter be appointed to the office of vakeel in the *Zillah* Courts, the *Provincial* Courts, or the Sudder Adawlut, shall receive a sunnud of appointment duly authenticated by the court to which they may be respectively attached. This sunnud, which is not required to be written on stamped paper, shall be drawn up according to the Form No. 1 in the Appendix to this regulation.

Pleaders to receive a sunnud from the courts to which they may be appointed. The sunnud to be of a prescribed form.

Second. Whenever a vakeel may be dismissed from his office, or may die, or may resign his situation, his sunnud of appointment shall be recalled and cancelled by the court to which such vakeel may have been attached.

And to be cancelled on the death, removal, or resignation of the pleaders.

V. Every vakeel, previously to being allowed to practice, shall take and subscribe before the court to which he may be appointed, an oath drawn up according to the Form No. 2 of the Appendix to this regulation, or a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted.

Pleaders to take an oath according to the prescribed form. Or a solemn declaration in lieu thereof.

VI. Pleaders employed in the several Courts of Civil Judicature shall be liable to dismission from their office, whenever they may be guilty of encouraging or promoting litigious suits, of wilfully delaying the suits of their clients for their own advantage, or refusing or omitting, without sufficient cause to be shown to the court, to carry on the suits of their clients after having accepted a vakalutnamah, or of fraudulent practices, neglect, or other misconduct in the discharge of their professional duty, or of gross profligacy or misbehaviour in their private conduct.

Pleaders liable to be dismissed for certain acts of misconduct.

VII. Rescinded by Section II., Act. I., 1846.

VIII. The vakeels are required to use due precautions to ascertain the real names and the identity of persons who may propose to employ them as pleaders, and any authorized vakeel who shall hereafter receive and file a vakalutnamah from any person under a fictitious name shall be liable to be dismissed from his office; provided, however, that the judge, upon full inquiry into the circumstances of the case, and the *Provincial* Court, on consideration of the judge's report, shall deem him to be deserving of such punishment.

Pleaders accepting vakalutnamahs in fictitious names liable to be dismissed.

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Vakeels required to examine and sign the pleadings before they are filed.

IX. *First.* The vakeels are hereby enjoined not to file any plaint, answer, or other pleading without previously ascertaining that such pleading has been duly prepared in conformity with the regulations; that it contains no unnecessary repetitions of former pleadings, no terms of personal abuse or reproach against the opposite party, his vakeels, witnesses, or other persons, and no groundless imputations on any Court of Justice or public officer, but that it contains such matter only as is apparently material and relevant to the suit. Every pleading filed by an authorized vakeel shall be signed by him, in testimony of his having considered and approved its contents.

Pleaders to examine exhibits previously to their being filed on the part of their clients.

Second. In order that the expense, trouble, and inconvenience frequently experienced by filing irrelevant exhibits and by summoning useless witnesses, may be avoided, the vakeels are hereby further required to examine the documents which their constituents may propose to exhibit in proof of their claims previously to their being filed in court, and to ascertain from their constituents, previously to summoning any witnesses, the specific points which such witnesses are expected to prove by their testimony.

And not to summon witnesses without previously ascertaining to what points their testimony is required.

Pleaders to be censured, and eventually dismissed, for breach of the preceding rules.

Third. The courts will carefully point out to the notice of the vakeels such parts of the pleadings as are irregular, irrelevant, or otherwise objectionable, and shall record their censure of any vakeel whose conduct, in opposition to the preceding rules, may in any particular instance demand such animadversion. If notwithstanding such recorded censure, a vakeel shall again be guilty of similar misconduct, he shall be liable to forfeit in each instance the amount of the fee to which he may be entitled in the suit, or to such other fine to Government, not exceeding twenty rupees, as the court may deem it proper to impose.

The Sudder Adawlut and the *Provincial* Courts authorized to dismiss the pleaders of their respective courts.

X. *First.* The Sudder Adawlut and the several *Provincial* Courts will at all times exercise their discretion in removing from office any pleader of their respective courts who may be guilty of any of the acts above mentioned, or who may be otherwise deemed unfit for the situation.

Misconduct or disqualifications of pleaders attached to the

Second. Whenever a *zillah judge* shall be of opinion that a vakeel attached to his court, or to that of [*a register or*]

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any of the sudder ameens, is unfit for the situation, in consequence of his having been guilty of any of the acts mentioned in the preceding sections, or that he is otherwise disqualified for the office of pleader, the judge shall report the circumstances of the case, together with his own opinion upon it, to the *Provincial* Court, who will pass such orders on the case as may appear to be proper, or will call for any additional information, or direct any further inquiry that the nature and circumstances of each case may appear to demand.

Zillah Courts to be reported by the judges of those courts to the *Provincial* Courts who will pass such order thereon as may be proper.

XI. The *zillah judges* are empowered, without the previous sanction of the *Provincial* Court, to suspend from his office any pleader attached to their courts who may be guilty of any gross act of fraud or misconduct; but in such instances it shall be the duty of the judge to report the circumstances of the case, with as little delay as possible, for the information and orders of the *Provincial* Court.

Pleaders attached to *Zillah* Courts may be suspended from office without the previous sanction of the *Provincial* Court. Such cases to be immediately reported for the information and orders of the *Provincial* Court.

XII. *First.* The parties in a cause are authorized to prosecute their respective pleaders in the Civil Courts of Judicature for any damages or injury which they may have sustained from any breach of the regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by their pleaders regarding the suit.

In what cases the pleaders are liable to be prosecuted in the Civil Court by their clients.

Second. Any party in a suit who may be dissatisfied with the conduct of his pleader shall be at liberty, at any stage of the trial previously to the decision, to withdraw the power delegated to his pleader, and to appoint another vakeel to plead the cause. In such cases the party is to present a petition to the court, notifying that he has withdrawn the management of the suit from such pleader, and is to file a new vakalutnamah in the name of the pleader whom he may appoint to carry on the suit; all acts, however, which may have been done by the first pleader on the part of his client previously to his having been dismissed are to be held valid; and on the conclusion of the suit, the court will exercise its discretion in awarding to the pleader first employed any portion of the authorized fee to which he may appear justly entitled, on a consideration of the trouble which he may have undergone, and the other circumstances of the case.

Parties may withdraw the management of a depending suit from their pleaders and may appoint new pleaders in their room.

The court may award to a pleader so removed any portion of the fee which may be proper.

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Measures to be adopted when a pleader may be unable to attend the court from indisposition or other sufficient cause.

XIII. If a pleader should be unable to attend the court in consequence of indisposition or other sufficient reason, he is to notify the same in writing to the court on unstamped paper; and the hearing of any cause in which such pleader may be employed is to be postponed to a future day, unless the party or his authorized agent shall commit the management of the cause to any other pleader of the court, or unless the party himself shall be present and willing to plead the cause in person. If the management of the cause shall be intrusted to any other pleader of the court, instead of filing a new vakalutnamah, it shall be sufficient for the party, or his agent duly authorized, to endorse on the back of the original vakalutnamah a written declaration that he has appointed some other vakeel of the court to conduct the cause, either permanently or during the absence of the pleader first appointed; and on passing a decision in such cases, the court shall direct the amount of the authorized fee to be divided between the two pleaders in such proportions as may furnish an equitable remuneration for the trouble which they may have respectively undergone.

Penalties for pleaders absenting themselves from court without notifying the cause of their absence.

XIV. *First.* If a pleader shall fail to attend in court on any day fixed for the transaction of civil business, and shall omit to notify in writing to the court his inability to attend, in consequence of indisposition or other sufficient cause, the court is authorized to impose on such pleader a fine for the first offence, not exceeding the sum of fifty *Arcot* rupees; and for the second offence, not exceeding one hundred *Arcot* rupees. If such pleader shall be guilty of a similar offence a third time, he shall be liable to dismission from his office.

Pleaders may be fined one hundred rupees for disrespect to the court.

Second. If any pleader shall be guilty of disrespect to the court in open court, the court is empowered to impose a fine upon him not exceeding the sum of one hundred *Arcot* rupees.

XV. *First.* Rescinded by Section II, Act I of 1846.

The orders of *Zillah judges* imposing fines on pleaders to be conclusive.

Second. All orders imposing fines on pleaders, which may be passed by the judges of the *Zillah* Courts in conformity with this regulation, shall be final, and the amount of

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the fines shall be levied by the process which is prescribed for the execution of decrees.

XVI. and XVII. Repealed by Act X of 1861.

XVIII. *First.* Whenever a vakeel attached to a *Zillah* Court may die, or may be removed from his office, or may voluntarily resign his situation, the judge of such *zillah* shall notify the same in a publication to be affixed in his own cutcherry, and in the cutcherries of the [*register*,] sudder ameens, and the collector of the district; the publication shall contain a statement of the several depending cases in which such vakeel may have been employed, and a requisition to the parties who have retained such vakeel to attend in person, or to substitute another vakeel in room of the pleader formerly appointed by them, within a reasonable period to be fixed by the court, not being less than six weeks. In such instances, instead of filing a new vakalutnamah, it shall be sufficient for the party, or his agent duly authorized, to endorse on the original vakalutnamah a written declaration that he has appointed some other vakeel of the court in lieu of the pleader who may have died or resigned his office or have been removed from his situation.

Publication to be issued on the death, resignation, or removal of a pleader in a *zillah* court.

What the publication is to contain.

Second. A publication issued in conformity with the preceding rules shall be held and considered to be a good and sufficient notice; and if any party shall not attend or appoint another vakeel within the period limited in the publication, he shall be required to shew cause for the omission; and if sufficient cause be not assigned, the court shall proceed as in case of default, in conformity with the provisions in force.

Such publication to be considered a good and sufficient notice.

Third. A similar notification shall be issued on the death, resignation, or removal of any pleader attached to the *Provincial* Courts or to the Sudder Adawlut. If the pleader shall have been attached to a *Provincial* Court, the publication shall be affixed in the cutcherry of such *Provincial* Court, and of the Sudder Adawlut, and in the cutcherries of the several *Zillah* Courts included in the division; and the period to be allowed for the parties to appear and to substitute another vakeel shall be less than two months. If the pleader shall have been attached to the Sudder Adawlut,

Publication to be issued on the death, resignation, or removal of a pleader in the *Provincial* Courts or in the Sudder Adawlut.

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the publication shall be affixed in that court, and in such of the *Provincial* Courts and of the *Zillah* Courts, in which it may appear necessary to publish the same with reference to the depending causes in which the vakeel may have been employed; and the period to be allowed to parties to appear and substitute another vakeel shall not be less than three months.

Similar publication may be issued in other cases.

Fourth. The courts are authorized to apply the principle of the preceding rules to cases in which the decision of suits may be materially delayed by the protracted indisposition of a pleader, or by his continued inability to attend the court from any other cause which may be expected to be permanent or of considerable duration.

Courts empowered to adjudge a reasonable portion of the fee to a pleader who may have been removed from the management of a cause without any fault on his part.

Fifth. Whenever a pleader, originally entertained by a party, may have commenced the pleadings and prosecution or defence of a suit, and from any cause not originating in the misconduct of such pleader, another pleader shall be employed in his stead, it shall be competent to the court in which the suit is decided or terminated to adjudge to the pleader so employed at the commencement of the suit (or if he be dead, to his heirs or legal representatives), such part of the established fee as may appear to be an equitable remuneration for the trouble which he may have undergone.

Pleaders may be employed as arbitrators.

XIX. The Courts of Civil Judicature are hereby empowered to permit any of the authorized vakeels of their respective courts to be arbitrators in depending suits, subject to the several rules and provision in force for referring suits to arbitration.

Pleaders may receive fees for legal opinions.

XX.* *First.* The authorized vakeels of the Sudder Adawlut, of the *Provincial* Courts, and of the *Zillah* Courts, are hereby empowered to receive fees for legal opinions *under the provisions contained in the following clauses of this section.*

A written statement of the case to be submitted to the pleader.

Second. Any person who may be desirous of obtaining the opinion of an authorized pleader regarding the legal validity and sufficiency of any claim, right, or title which

* So much of section 20 as prescribes the rate of fees to be received by authorized pleaders for legal opinions rescinded by Section 9 Act I of 1846.

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he may suppose himself to possess, and on the consequent expediency of prosecuting or defending, either originally or in appeal, such supposed claim, right, or title, in the Courts of Civil Judicature, may submit a written statement of his claim under his seal, signature, or mark, to the pleader whose opinion he may wish to obtain.

Third. The pleader, to whom such statement may be submitted, after an attentive consideration of the laws, regulations, usages or precedents which may be applicable to the case, and of the arguments and proofs which may be adduced in support of the claim, shall furnish to the party, under his signature, a written declaration of his opinion, and of the grounds upon which that opinion may be formed.

The pleader to give a written declaration of his opinion.

Fourth & Fifth. Rescinded by Section IX., Act I. of 1846.

Sixth. Any pleader who, under the preceding rules, may knowingly furnish an opinion of a nature evidently calculated to promote the institution of unfounded or litigious suits, or to discourage the amicable adjustment of dubious claims, shall be liable to be dismissed from his office; and if after furnishing such dishonest opinion he shall be liable as a pleader in the suit, his fees shall be liable to be forfeited by order of the court, either to Government or to the party whom he may have wilfully misled by such opinion.

Pleaders liable to penalties for wilfully furnishing a dishonest opinion.

XXI. *First.* When a party in a cause may be desirous of retaining a vakeel for the prosecution or defence of any civil suit, he shall not be required to pay to such vakeel the retaining fee of four annas heretofore prescribed; but he shall execute to him a vakalutnamah, constituting him pleader in the cause, and authorizing him to prosecute or defend the suit, and further binding himself to abide by, and to confirm all acts which such pleader may do or undertake in his behalf in the cause, in the same manner as if such party had been personally present and consenting; the party is to attest the instrument with his seal or signature, or with his mark, if he cannot write, in the presence of two credible witnesses, who are likewise to attest it in the same manner,

Retaining fee abolished.

Rules for the execution of a vakalutnamah.

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and who are to attend the court and prove the vakalutnamah in all cases in which it may be judged requisite.

Second. Repealed by Act VII of 1870.

Pleaders, after accepting a vakalutnamah, are prohibited from being employed in the same cause against the party who may have retained them.

XXII. When a vakeel to whom a vakalutnamah may have been executed under the preceding section shall consent to undertake the prosecution or defence of the suit, he shall affix his signature to the back of the vakalutnamah, together with the date on which such signature may be affixed, and shall thenceforward be precluded from being employed in the same cause against the party who may have so retained him.

XXIII. & XXIV. Rescinded by Section II. Act I. of 1846, together with the Forms 3 and 4 of the Appendix.

Specification of the rates of fees payable to vakeels in regular suits.

XXV. *First.* In all regular suits which may be instituted, either originally or in appeal, from and after the first day of February 1817, in any of the *Zillah* Courts, the *Provincial* Courts, or the Sudder Adawlut, the vakeels employed by the respective parties are to be allowed for pleading the causes of their clients, the rates of fees calculated as follows:

In suits for money, effects, or for other personal property, or for land or other immovable property of any description, if the amount or value of the claim, estimated according to the provisions of Section XIV. Regulation XIII. of 1816,* shall not exceed 5000 *Arcot* rupees, five per cent.

If the amount or value shall exceed 5,000 rupees and shall not exceed 20,000 *Arcot* rupees, on 5,000 as above, and on the remainder two per cent.

If the amount or value shall exceed 20,000 rupees and shall not exceed 50,000 rupees, on 20,000 as above, and on the remainder one per cent.

If the amount or value shall exceed 50,000 *Arcot* rupees and shall not exceed 80,000 *Arcot* rupees, on 50,000 as above, and on the remainder eight annas per cent.

If the amount or value shall exceed 80,000 rupees, the fee to the vakeel shall be one thousand rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakeel may be employed.

* Repealed by Act XXXI of 1860.

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Second. In all the preceding calculations where the amount of value may be in fractions of rupees, such fractions are to be rejected in calculating the fees thereupon. Fractions of rupees to be rejected in the preceding calculations.

Third. For every sum which may be paid to a vakeel by a Civil Court on account of his fees, such vakeel shall give a receipt written on the stamped paper prescribed in Section XI. Regulation XIII. 1816.* A receipt to be given for the prescribed fees on stamped paper.

XXVI. *First.* If the decree shall be given against the defendant or respondent, and the whole of the money or property which may be demanded by the appellant or plaintiff shall be decreed to him, a sum equal to the whole of the fees of his pleader shall be adjudged to the plaintiff or appellant, in addition to the other costs which may be awarded to him; but if only a part of the money or property claimed is decreed to the plaintiff or appellant, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fee did to the demand stated in the plaint or appeal, is to be decreed and added to the costs which may be awarded to the plaintiff or appellant. Pleader's fees how to be charged in the judgment.

Second. If the suit of the plaintiff or appellant shall be dismissed, whether upon an investigation of the merits or otherwise, the plaintiff or appellant is to be charged with the fees of his own pleader and with those of the defendant or respondent. Continuation of the same subject.

Third. Provided, however, that if in any instance the payment of the pleader's fees, according to the preceding rules, should not appear to be just and equitable, the Courts of Civil Judicature may exercise their discretion in charging the fees of the pleaders to the parties respectively, in such proportions as may appear equitable and proper under a consideration of all the circumstances of the case. Proviso.

XXVII. The Courts of Civil Judicature are to insert in their decrees all sums paid or payable by the parties under the regulations on account of fees or stamp-duties, as well as on account of compensation for the expense of witnesses, and of subsistence-money to peons employed in serving the processes of the courts, and of all other costs and expenses of All legal expenses and costs to be included in the decree, and to be charged to the parties in such mode as may appear equitable.

* Repealed by Act XXXVI of 1860.

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the suit: such costs and expenses shall be ultimately charged to the parties cast, or to the parties respectively, in such proportions as the court may deem equitable.

XXVIII. & XXIX. Rescinded by Section II. Act I. of 1846.

Rules where two or more pleaders may be employed by the same party. In such cases, one vakalutnamah only is requisite.

XXX. *First.* The parties in a suit are respectively permitted to entertain two or more pleaders.

Second. It shall be sufficient in such cases for the party employing two or more vakeels in the same suit to file a single vakalutnamah.

When two or more pleaders may be employed, the adverse party shall in no case pay more than the prescribed fee for one pleader.

Third. If the party shall agree to pay to each of the vakeels employed by him the full amount of the authorized fee, the opposite party in the suit shall in no case be required to make good more than the fee of one of those pleaders, or such part of that fee as may be adjudged against him by the court. The fees of the other pleader are to be considered as a separate expense to be defrayed exclusively by the party entertaining him, and for which he is not to be reimbursed in any case whatever.

Rules for the payment of vakeels' fees when the suit may be withdrawn or dismissed without an investigation of the merits of the case.

XXXI. *First.* If a suit shall be withdrawn or dismissed on default, without a determination upon the merits of the case, before all the requisite pleadings shall have been filed in the court, the respective pleaders of the plaintiff and defendant, or of the appellant and respondent, shall each be entitled to only one-fourth of the established fee which they would have received had the suit been brought to a regular decision by the court. If a suit shall be withdrawn or dismissed on default, after all the requisite pleadings shall have been filed in court, the respective pleaders are to be entitled to *one-half* the fees which they would have received if judgment had been given in the cause. The fees in both of the above-mentioned cases are to be charged to the plaintiff or appellant withdrawing the suit, or suffering it to be dismissed on default, together with all the admitted costs incurred by the defendant or respondent.

Rules applicable to the fees of pleaders in suits adjusted by razeenamahs.

Second. The same rules shall be considered applicable to cases adjusted by razeenamah, except that the fees of the pleaders, and all other costs of the suit, shall be paid by the

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parties in such manner and proportions as may have been agreed upon, and inserted in the razeenamah.

XXXII. to XXXV. Rescinded by Section II. Act I. of 1846.

XXXVI. Pleaders are to give written receipts on unstamped paper for all accounts, writings, or documents which may be delivered to them by their clients in the course of any suit or process; and if a pleader shall refuse to return such accounts, documents, or writings, the court, upon a petition being presented to them for that purpose by the owners of the papers so withheld, shall cause them to be restored.

Pleaders to give written receipts for documents intrusted to them by their clients.

XXXVII. Repealed by (*Madras*) Act II. of 1867.

XXXVIII. No part of this regulation is to be construed to prohibit or to prevent any individual from appearing and pleading his own cause in person, in any of the Courts of civil judicature, without employing an authorized pleader.

Individuals not prohibited from pleading their own suits.

XXXIX. The provisions of this regulation are not intended to apply to vakeels who may be employed in the courts of the village [*or district*] moonsifs, or before the village or district punchayets, or before the collectors of zillahs, under the provisions of Regulations IV., V., VII., and XII., of 1816.

This regulation not intended to apply to vakeels under Regulations IV., V., VI., VII., and XII., 1816.

XL. Repealed by *(Madras)* Act II. of 1869.

APPENDIX.

No. 1.

Sunnud to be granted to Vakeels.

In conformity with the provisions of Regulation XIV. 1816, you, A. B., are hereby appointed to the office of pleader in the Sudder Adawlut, or in the *Provincial Court for the division of* , or in the *Zillah* Court of . You will not be liable to be removed from your situation so long as you may conduct yourself with propriety and discharge your duty with zeal and integrity, under the rules contained in the regulations which now are or may hereafter be in force.

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No. 2.

Oath to be administered to Vakeels.

I, A. B., solemnly swear that I will truly and faithfully execute the duties of pleader of the Sudder Adawlut, or the *Provincial Court for the division of* , or the *Adawlut of the zillah of* to the best of my knowledge and judgment.

A. D. 1827. REGULATION VII.

A REGULATION *for constituting the Office of Native Judge.*

Passed on the 31st August 1827.

Preamble.

WHEREAS it has been deemed expedient, for the more prompt and efficient administration of justice, to establish the office of native judge, the following rules are enacted for that purpose, and for defining the powers and duties of the person holding that office.

Governor in Council empowered to establish Native Courts, to be superintended by *Native judges*.

II. The Governor in Council is empowered, whenever he may deem it expedient, to establish in any part of the territories subject to this Presidency, a native court, to be superintended by a *native judge*; and to subject to the jurisdiction of such *native judge* any part of one or more zillahs that he may deem proper.

Section II, Regulation I. 1821, applicable to *Native* Courts. —Appointment of *native judges* vested in Governor in Council.

III. Section II., Regulation I., 1821, shall be applicable to the courts established under this regulation. The appointment of *native judges* shall rest with the Governor in Council.

Oath of *native judge*.

IV. Every *native judge*, previously to entering on the duties of his office, shall take and subscribe before the Governor in Council, or before any person whom the Governor in Council may commission to administer it, a similar oath to that which is directed by Section XIII., Regulation II., 1802, to be taken and subscribed by the judges of the *Zillah* Courts, or shall subscribe a solemn declaration to the same effect.

V. *First.* Repealed by (*Madras*) Act V. of 1867.

Second. Repealed by *(Madras)* Act II. of 1869.

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A. D. 1818. REGULATION VIII.

A REGULATION *prescribing the Rules under which Appeals may be preferred to the King's most excellent Majesty in his Privy Council, from the Decisions of the Court of Sudder Adawlut at Fort St. George.*

Passed on the 3rd November 1818.

Preamble.

THE Governor-General in Council having relinquished the authority hitherto exercised by him of receiving appeals from the decrees of the *Court of Sudder Adawlut of Fort St. George*, it is necessary to repeal the provisions of the regulations with regard to such appeals; and it is further necessary to declare the rules under which appeals to the *King's* most excellent Majesty in his Privy Council may be preferred from the decrees of the said *Court of Sudder Adawlut*; the Governor in Council has therefore enacted the following rules for that purpose, to be in force from the date of their promulgation.

II. Repealed by (Madras) Act II. of 1869.

Petitions of appeal to the *king* in council shall be presented to the *Sudder Adawlut* within six months.

III. All persons desirous of appealing from a judgment of the *Court of Sudder Adawlut* to the *King* in Council are required to present their petition of appeal to the said court of *Sudder Adawlut*, either in person, or through one of the pleaders of that court, within six calendar months from the date on which the judgment appealed against may have been passed.

The court may either order their judgment to be carried into execution, taking security from the party in whose favour the decree may have been passed to abide the event of the appeal, or suspend the execution, taking the like security from the party left in possession.

Appellants in all cases to give security for payment of costs and for the performance of the final order or judgment on the appeal.

IV. The *Court of Sudder Adawlut* may either order the judgment passed by them to be carried into execution, taking sufficient security from the party in whose favour the same may be passed for the due performance of such order or decree, as *His* Majesty, *his* heirs or successors shall think fit to make on the appeal; or suspend the execution of their judgment during the appeal, taking the like security in the latter case from the party left in possession of the property adjudged against him; but in all cases, security is to be given by appellants to the satisfaction of the *Sudder Adawlut*, for the payment of all such costs as the said court may think likely to be incurred by the appeal, as well as for the performance of such order or judgment as *His* Majesty, *his* heirs or successors, may think fit to give thereupon; and after receiving such security, the *Court of Sudder Adawlut* are to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively, that they may

Appeals to be de-

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cleared admitted on receiving such security, and notice to be given to the parties to prosecute and defend the same according to the established mode of proceeding.

take measures, the one to prosecute, the other to defend the cause in appeal before *His* Majesty in his Privy Council, according to the established mode of proceeding in similar cases.

In all cases of appeal, two copies of all proceedings to be prepared in English and transmitted, under the official seal and signature of the register, to the Governor in council, to be forwarded to *His* Majesty in council.

V. In all cases wherein the *Sudder Adawlut* may admit an appeal to the *King* in Council, they are to cause two exact copies to be made of all the proceedings held, and judgments or orders given in the case appealed, including the whole of the evidence and documents (translated into English, if the original documents be in any of the country languages), and are to transmit the same as soon as prepared, under their official seal and the signature of their register, to the Governor in Council, for the purpose of being forwarded by the first secure and separate conveyances to *His* Majesty in Council. The register to the *Sudder Adawlut* shall also, on the application of the appellant or respondent, furnish him or them with one or more copies of the proceedings held, and judgments or orders passed on the case appealed; provided, however, that the parties on whose application the copies hereinbefore mentioned shall be made, whether for transmission to *His* Majesty in Council or for delivery to the parties themselves, shall respectively agree to defray such expense as may be incurred thereby, but not otherwise. And the register is not to transmit the copies, when prepared, to the Governor in Council for the purpose above stated, nor to deliver to parties copies prepared for their use respectively, without the previous payment of the expense incurred thereby; the amount of which is to be carried to the credit of Government, by whom the necessary expenditure on this account will be made in the first instance.

The parties also to be furnished with copies of the proceedings, on application, provided they agree to pay the expense of preparing the same.

Copies of any local regulation under which the judgment may have been passed, and which may have been referred to, to accompany the proceedings.

VI. In case the judgment appealed from shall have been passed in pursuance of any local regulation or regulations enacted by the Governor in Council, or in case any such regulation shall have been referred to in the judgments passed by any of the courts wherein the cause appealed from may have been tried and decided, a copy of such regulation or regulations, or an extract therefrom, containing all that has reference to the matter at issue, shall be annexed to the several copies of the proceedings prepared in conformity to the preceding section, whether for delivery to the parties, or for transmission to *His* Majesty in Council.

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First & Second. Repealed by (*Madras*) Act II. of

rd. Rescinded by Section II., Act I., 1846.

: Rescinded by Section V., Act VII., 1843.

I. It shall not be competent to a *native judge* to e an appeal from the decision of any European officer vernment. All such appeals shall lie to the Zillah only.

Native judge not competent to receive an appeal from the decision of any European officer of Government.

No *native judge* appointed under this regulation be competent to issue any precept to any collector, linate or assistant collector, or other European officer of nment. In all cases requiring the issue of such precept, tive *judge* shall transmit a brief abstract of the case ich it relates to the judge of the zillah, and shall what is required to be done by the collector or other ean officer; and the judge of the zillah shall issue the ary precept, and transmit an attested translation of me and of the return thereto, in the language of the t, to the *native judge*.

Native judge not competent to issue any precept to a collector, &c., or other European officer of Government: how to proceed in such cases.

Duty of the zillah judge thereupon.

The recommendation of persons for the office of district moonsif within the jurisdiction of the *native judge* shall n with the zillah judge.

Recommendation of persons for the office of district moonsif to remain with the zillah judge.

It shall not be competent to any *native judge* to nd or fine a district moonsif.

Native judge not competent to suspend or fine a district moonsif.

I. It shall be the duty of a *native judge* to report to llah judge every instance of misconduct or neglect of in the district moonsifs within his jurisdiction, which ome to his knowledge.

Duty of a *native judge* in the case of improper conduct in the district moonsif.

II. It shall not be necessary that any document pre- in a *native* court shall be accompanied with a trans- in the English language.

English translation of any document prepared in *native* court not required.

V. Collectors, subordinate or assistant collectors, shall any case send persons for confinement to the *native* , but to the zillah judge, or *assistant* judge, as hereto-

Collectors in no case to send persons for confinement to the *native judge*.

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A. D. 1828. REGULATION II.

A REGULATION *for improving the Administration of Justice by District Moonsifs, in certain respects.*

Passed on the 18th April [illegible]

Preamble.

WHEREAS the rule contained in Clause First, Section V, Regulation VI., 1816, that the local jurisdictions of district moonsifs shall include one or more whole tahsildaries or police jurisdictions, has been found in many instances to preclude such an arrangement of the former jurisdictions as is most for the convenience of the inhabitants and the despatch of judicial business; and whereas the abolition of the fee on suits preferred to district moonsifs for amount or value not exceeding ten rupees has not answered its intended purpose, and it is expedient to modify the fees receivable by the said moonsifs, in order that the expense of seeking justice in their courts may be reduced, without diminishing the compensation of the moonsifs; and whereas it is further expedient to prevent collusion in references by district moonsifs to the zillah law officers,—the Governor in Council has enacted this regulation, to be in force from the date of its promulgation.

Restriction as to the local jurisdiction of district moonsifs removed.

II. So much of Clause First, Section V., Regulation VI, 1816, as prescribes that the local jurisdictions of district moonsifs shall be so arranged as to include one or more whole tahsildaries or police jurisdictions, is hereby rescinded; and it shall be competent to the *Provincial Courts* to modify the local jurisdictions of district moonsifs from time to time, with reference solely to the quantity of business, and the convenience of the inhabitants resorting to the moonsifs' courts.

III. Rescinded by Section II., Regulation II. of 1834.

IV. Repealed by (*Madras*) Act V. of 1867.

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A. D. 1829. REGULATION I.

A REGULATION *for amending the Rules in force relative to the Trial of Appeals, and for the better securing of Impartiality in the Administration of Justice.*

Passed on the 18th January 1829.

WHEREAS it is considered just and expedient to extend to all judicial officers, European and native, the prohibition imposed by Regulation III., 1825, upon the judges of the Court of Sudder Adawlut and of the Provincial and Zillah Courts, against trying or sitting on the trial of appeals in causes in which the previous trial has taken place before themselves: and whereas it is necessary to provide rules for the guidance of judicial officers in disposing of suits in which they may be directly or indirectly interested,—the Right Honorable the Governor in Council has therefore been pleased to enact this regulation, which shall be in force from the date of its promulgation. Preamble.

II. *First.* It is hereby enacted, that no judicial officer, European or native, shall try an appeal from any decision passed by himself in any situation which he may have previously held. No judicial officer shall try an appeal from any decision passed by himself.

Second. In extension of the rules contained in Section III., Regulation III. of 1825, it is hereby enacted, that whenever an appeal may be preferred to any judicial officer, European or native, having appellate jurisdiction, from a decree passed by himself in any former capacity, or whenever such an appeal may be pending in the court to which he is appointed, at the time when he takes charge thereof, he shall forward the petition of appeal, and all the pleadings, evidence, and documents to the court to which in ordinary cases an appeal lies from his decisions; and that court shall receive and try the appeal in the same manner as other appeals which it is empowered to try. Judicial officers to forward such appeals to the courts to which appeals from their decisions ordinarily lie.

Third. The removal of the appeal to the higher court, in these cases, shall nowise affect the stamp-duties, which shall be the same as if the appeal had been tried by the court to which it was first preferred. Stamp-duties not to be affected by such removal of appeals.

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No judge of the Sudder Adawlut, or of any *Provincial Court of Appeal*, shall sit on trial or sign a decree in any case in which he may be personally interested.

III. *First.* No judge of the Court of Sudder Adawlut, or of any *Provincial Court of Appeal*, shall sit on the trial of any cause in which he may be directly or indirectly a party, or may be otherwise personally interested; neither shall he sign a decree passed in such a cause by the court of which he is a Judge.

All other judicial officers to proceed according to Clause Second, Section II., in suits in which they may be personally interested.

Second. Every *zillah judge, assistant* Judge, and every district moonsif, shall proceed as directed in Clause Second of the preceding section, whenever a suit in which he may be directly or indirectly a party, or may be otherwise personally interested, shall be instituted before him, or depending in his court when he takes charge thereof.

Every district moonsif to proceed according to Clause Second, Section II., when suits in which they may be personally interested are referred to them.

Third. Every sudder ameen or district moonsif shall proceed as directed in Clause Second of the preceding section, whenever a suit in which he may be directly or indirectly a party, or may be otherwise personally interested, shall be referred to him by the zillah judge, or shall be depending in his court, when he takes charge thereof.

Stamp-duties not to be affected by the removal of the suits alluded to in this section.

Fourth. The removal of the suits alluded to in this section to a superior court shall nowise affect the stamp-duties, which shall be the same as if the suit had been decided by the lower tribunal.

A. D. 1829. REGULATION. V.

A REGULATION *for modifying Section XVI., Regulation III.*, 1802, *and for declaring the Legal Force of Wills left by Hindoos within the Territories subject to the Presidency of Fort St. George, to be dependent on their conformity to the Hindoo Law, according to the Authorities prevalent in the respective Provinces under this Government.*

Passed on the 25th August 1829.

Preamble.

WHEREAS Clause First, Section XVI. Regulation III. 1802, directs that "in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered

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as the general rules by which the judges are to form their decisions;" and whereas, although wills are instruments unknown, and have been made so as to be totally repugnant to the Hindoo law according to the authorities prevalent within the several provinces of this Government, yet Clause Second of the said section directs that, on the death of a Hindoo leaving a will, his executors "are to take charge of the estate of the deceased and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country;" and whereas this last enactment is at variance both with the Hindoo law, according to the authorities prevalent within these territories, and with the above-quoted obligation imposed on the courts to administer justice to the natives in the said matters according to their own laws, and it is therefore expedient that the same should be modified,—the Governor in Council has therefore enacted this regulation, to be in force from the date of its promulgation.

II. Repealed by (*Madras*) Act II of 1869.

Rules respecting estates of Hindoos dying intestate applicable to those of Hindoos dying and leaving wills.

III. The rules contained in Clauses Third, Fourth, Fifth, Sixth, and Seventh, Section XVI., Regulation III., 1802, respecting the estates of Hindoos dying intestate, are hereby declared equally applicable to the cases of Hindoos dying and leaving wills.

Wills of Hindoos to have no legal force whatever, except they be in conformity to the Hindoo law.

IV. Wills left by Hindoos within the territories subject to this Government shall have no legal force whatever, except so far as their contents may be in conformity with the provisions of the Hindoo law, according to the authorities prevalent in the respective provinces under this Presidency.

A. D. 1832. REGULATION XI.

A REGULATION *for declaring the Rights of Government and of Individuals with respect to hidden Treasure, and for prescribing the Rules to be observed on discovery of such Treasure.*

Passed on the 17th September 1832.

Preamble.

WHEREAS the provisions of the Mahomedan and Hindoo laws respecting the discovery of hidden treasure differ materi-

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ally; and whereas it is deemed expedient that an uniform principle should be established for the guidance of persons by whom hidden treasure may be discovered, the following provisions are enacted, to be in force as soon as promulgated throughout the provinces immediately subordinate to the Presidency of Fort St. George.

Hidden treasure, under what circumstances and conditions to become the property of the finder.

II. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property, may be found buried in the earth, or otherwise concealed within any part of the territories subject to this Presidency, and after due notification, the owner thereof may not be discoverable, such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed in amount or value the sum of one lac of *Madras* rupees, and provided the finder or finders shall have conformed to the rules prescribed in this regulation.

The finder how to proceed on the discovery of hidden treasure.

III. Whenever any person may find hidden treasure of the description stated in the foregoing section, he shall give immediate notice thereof to the judge of the zillah or to the *assistant* judge of the auxiliary court within whose jurisdiction the treasure may have been found, and shall at the same time deposit the treasure in the court, with an exact inventory thereof.

Duty of the zillah or *assistant* judges in such cases.

IV. The zillah or *assistant* judge receiving a deposit, as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory, and shall issue a public notification in the current languages of the country, to be published and affixed in his own court-house, and in the cutcherry of the collector of the district, requiring all persons who may have any claim of right to the treasure in deposit, to attend in person or by vakeel, and prove their title thereto, within six months from the date of the notice.

Notification to be issued, and period allowed to claimants to bring forward their claims.

Collectors of land revenue to bring forward any claim of right which Government may appear to possess to such treasure.

V. It shall be the duty of the collectors of land revenue acting under the instructions of the Board of Revenue, to bring forward and to support, in conformity with the foregoing provision, any claim of right which Government may appear to possess to such treasure. In the event of any

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claim of right being preferred, either on the part of individuals or of Government, pursuant to the prescribed notification, the judge shall institute a summary inquiry into the claim preferred; and if the title of Government, or other person so claiming the treasure in deposit, or any part thereof be clearly established, he shall adjudge the same accordingly; subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may, in each case, appear just and reasonable.

Summary inquiry to be instituted by the judges of Zillah and auxiliary Courts.

How judgment to be awarded by the judge.

VI. If no claim of right be preferred either by Government or by any individual within the period limited by the notification directed in Section IV. of this regulation, or if the claim or claims so preferred shall not, on a summary inquiry, appear to be well founded, and the amount or value of the hidden treasure found at the same time, or in the same place, shall not exceed one lac of *Madras* rupees, the zillah or *assistant* judge shall adjudge the same to the person or persons who may have discovered the treasure and deposited it in the court, as required by Section II.; subject only to the actual expense which may have been incurred in adopting the measures prescribed by this regulation.

What judgment to be passed in cases in which no claim shall be preferred either by Government or by individuals, and the amount may not exceed one lac of *Madras* rupees.

VII. If the amount or value of any hidden treasure found at the same time, or in the same place, shall exceed one lac of *Madras* rupees, and no claim of right thereto be established, judgment shall be given, according to the preceding section, in favour of the person or persons who may have discovered and deposited the treasure, to the amount of one lac of *Madras* rupees, and the excess above that sum shall be declared at the disposal of Government.

Decision to be passed by the judge in cases in which the amount of treasure shall exceed one lac of *Madras* rupees and no claim of right thereto be established.

VIII. If any person discovering hidden treasure of the description specified in Section II. of this regulation, shall not, within one month after finding the same, give notice to the judge of the zillah, or to the *assistant* judge of the auxiliary court, in conformity with Section IV. and make the deposit thereby required, he shall be considered to have forfeited all right and title to the treasure, as well as all claim to a reimbursement of expense, compensation, or reward under the provisions of this regulation; and the treasure so

Persons discovering hidden treasure who shall neglect to give due notice, within one month, shall be considered to have forfeited all right and title to the treasure and compensation.

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clandestinely withheld from public investigation shall, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner, with interest and costs; or if no private claim be established, shall, on the application of the vakeel of Government, under instructions from the Board of Revenue, be liable to confiscation to Government.

The summary decisions of the judges of the Zillah and auxiliary Courts shall be open to a summary appeal to the *Provincial* Courts.

IX. The summary decisions of the judges of the zillah or of the *assistant* judges of the auxiliary courts, which may be passed under this regulation, shall be open to a summary appeal to the *Provincial Court*, under the general rules in force relative to summary appeals.

The decision of *two or more judges of the Provincial Courts* on such appeals to be final.

Provision for admitting a second summary appeal before the Sudder Adawlut.

X. The decisions of *two or more judges of the Provincial Courts* on such appeals shall be final, unless the Court of Sudder Adawlut should, on the face of the decree, or on inspection of any documents exhibited with it, see just and sufficient ground for admitting a second summary appeal to that court, in which case only such further appeal may be admitted and proceeded upon under the general rules in force for summary appeals.

1. This Regulation relates to treasure without any apparent owner, discovered by one who himself could claim no title thereto.—*Dec. S. C. S. A. No.* 68 *of* 1860. 30*th July* 1860, *p.* 88.

2. It was held that treasure found within the precincts of the family residence by a member of the family, did not come within the provisions of this Regulations, there being no grounds to doubt that the treasure belonged to the family.—*Ib.*

3. Collectors are required to adopt measures for making generally known to the inhabitants the requirements of this Regulation, and should repeat the notice from time to time.—*C. O. B. R.*, 2*d December* 1847, *I*, 436.

4. A claim having been preferred by a Zemindar to certain gold coins found in a garden situated in his Zemindaree, the Board ruled that as Government was not a party before the Court, it was left to the Court to adjudge the treasure, either to the finder, the owner of the garden, or the Zemindar; but at the same time observed that the provisions of this Regulation apply to every part of the Presidency (Zemindaree as well as Amany lands), and as the preamble expressly declares it to have been passed to establish a uniform principle, it seems quite clear that the right to treasure found was not given to Zemindars, neither can they expect more than the Government have reserved to themselves.—*Board's Letter to Govt.* 25*th October* 1852. *Approved by Govt.* 24*th Decr.* 1852. *C. O. B. R., II*, 211.

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A. D. 1833. REGULATION III.

A REGULATION *for conferring upon Sudder Ameens jurisdiction in Criminal Cases, and for extending the Civil Jurisdiction of Registers, Sudder Ameens, and District Moonsifs.*

Passed on the 23rd July 1833.

I. Repealed by (*Madras*) Act II. of 1869.

II. Repealed by Act XVII. of 1862.

III. & IV. Repealed by (*Madras*) Act II. of 1869.

V. The jurisdiction of district moonsifs, as defined in Section XI., Regulation VI., 1816, is hereby extended in regard to suits of the description specified in Clause Second of that section to one hundred *Madras* rupees, and in regard to suits of the descriptions specified in Clauses Third, Fourth, and Fifth of that section, to one thousand *Madras* rupees.

Jurisdiction of district moonsifs extended to 1,000 rupees.

VI. Repealed by (*Madras*) Act II. of 1869.

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ACTS OF THE GOVERNMENT OF INDIA.

A. D. 1837. ACT XXI.

AN ACT *to authorize the Government to substitute a written declaration for certain Oaths.*

Passed on the 25th September 1837.

Power of Governor in Council to dispense with oaths.

I. It is hereby enacted, that from the 1st day of October 1837, it shall be lawful for the Governor in Council of any presidency of which there is a Council, and for the Governor of any presidency of which there is no Council, to dispense with any oath which by any Regulation of that presidency, or by any Act of the Governor-General of India in Council, is now required to be taken, and that it shall be lawful for the Lieutenant-Governor of the North-west Provinces to dispense with any oath which by any Regulation or any Act of the Governor-General of India in Council now in force within those provinces is now required to be taken.

but not with judicial oaths.

II. Provided always, that the dispensing power given by this Act shall not extend to any oath now required by law to be taken in any stage of any judicial proceeding.

Declaration to be substituted for oath.

III. And it is hereby enacted, that whenever any oath is dispensed with under the authority given by this Act, the person who but for such dispensation would have been legally required to take such oath shall, in the presence of the functionary by whom, but for such dispensation, such oath would have been administered, make and subscribe a declaration in writing to the same effect with such oath.

IV. Repealed by Act XVII. of 1862.

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A. D. 1838. ACT XII.

AN ACT *for vesting Principal Sudder Ameens with powers as to Hidden Treasure.*

Passed on the 21st May 1838.

Power of Principal Sudder Ameens in cases of hidden treasure.

IT is hereby enacted, that from the first day of July 1838, all powers vested by Regulation XI of 1832, of the Madras Code, in Zillah or Assistant Judges, shall be vested in every Principal Sudder Ameen within the territories subject to the Government of the Presidency of Fort St. George, in respect of all hidden treasure of any of the kinds specified in Section II. of that Regulation, which may be found within his jurisdiction; and all rules applicable to Zillah or Assistant Judges, shall be applicable to every such Principal Sudder Ameen in respect of such treasure.

A. D. 1839. ACT XXXII.

AN ACT *concerning the allowance of Interest in certain cases.*

Passed on the 30th December 1839.

I. Whereas it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV, Chapter 42, Section 28, concerning the allowance of interest in certain cases:

Interest at current rate to be allowed upon debts.

It is, therefore, hereby enacted, that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

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A. D. 1840. ACT V.

AN ACT *concerning the Oaths and Declarations of Hindoos and Mahometans.*

Passed on the 24th February 1840.

Affirmation substituted for judicial oaths.

I. Whereas obstruction to justice, and other inconveniences have arisen in consequence of persons of the Hindoo or Mahometan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect:—

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

II. & III. Repealed by Act XVII. of 1862.

Act does not extend to Her Majesty's Court.

IV.* And it is hereby provided, that this Act shall not extend to any declaration made under the authority of Act XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.

A. D. 1840. ACT VI.

AN ACT *for the amendment of the law concerning the negociation of Bills of Exchange.*

Passed on the 2nd March 1840.

What acceptance deemed general.

I. Whereas it is expedient to extend to the territories under the Government of the East India Company the amendments of the law respecting Bills of Exchange con-

* So much of Section 4 as provides for the non-extension of the Act to any declaration, &c. made in Her Majesty's Courts, repealed by Section 4, Act XVIII. of 1863.

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tained in the Statutes 58 Geo. 3, Cap. 93—1 and 2 Geo. 4, C. 78—6 and 7 W. 4, C. 58—2 and 3 W. 4, C. 98;

It is hereby enacted, that from and after the first day of May, in the year of our Lord 1840, if any person shall accept a bill of Exchange payable at any other place than at his own place of residence without further expression in his acceptance, such acceptance shall be deemed and taken to be to all intents and purposes a general acceptance. But if the acceptor shall, in his acceptance, express that he accepts the bill payable at such other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay such bill except in default of payment when such payment shall have been duly demanded at such other place.

Acceptance insufficient except written.

II. And it is hereby enacted, that after the day and year aforesaid, no acceptance of any Bill of Exchange drawn within the territories of the East India Company, shall be sufficient to charge any person unless such acceptance be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts.

Presentation of Bills accepted in supra protest for honor, &c.

III. And it is hereby enacted, that it shall not be necessary to present Bills of Exchange accepted supra protest for honor, or having a reference thereon in case of need to the acceptor or acceptors for honor, or to the referee or referees, until the day following the day on which such Bills of Exchange shall become due, and if the place of address on any such Bill of Exchange of such acceptor or acceptors for honor, or of such referee or referees be other than where such bill shall therein be made payable, then it shall not be necessary to forward such Bill of Exchange for presentment for payment to such acceptor or acceptors for honor, or referee or referees, until the day following the day on which such Bill of Exchange shall become due.

When Bills may be protested for non-payment.

IV. And it is hereby enacted, that all Bills of Exchange wherein the drawer or drawers thereof shall have expressed that such Bills of Exchange are to be payable in any place other than the place by him or them therein mentioned to be the place of residence of the drawee or drawees hereof, and

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which shall not on the presentment thereof be accepted, shall or may be, without further presentment to the drawee or drawees protested for non-payment in the place in which such Bills of Exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such Bills of Exchange shall have been paid to the holder or holders thereof on the day on which such bill would have become payable had the same been duly accepted.

Bills, &c. for usurious consideration not void when.

V. And it is hereby enacted, that no Bill of Exchange or Promissory Note that shall be drawn or made after the passing of this Act shall, though it may have been given for a usurious consideration, or upon a usurious contract, be void in the hands of an indorsee for valuable consideration, unless such indorsee had, at the time of discounting or paying such consideration for the same, actual notice that such Bill of Exchange or Promissory Note had been originally given for a usurious consideration, or upon a usurious contract.

Scope of Act.

IV. And it is hereby provided, that this Act shall not be construed to intend to affect Bills of Exchange or Promissory Notes, in any case which, but for the passing of this Act, would not be governed by the law of England, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

A. D. 1840. ACT VIII.

AN ACT *concerning the signing of Awards by the Members of Punchayets.*

Passed on the 13th April 1840.

Signature of the majority of a punchayet legalizes the award.

IT is hereby enacted that in cases where the minority of the members of a Punchayet, held under the provisions of the Madras Code, may decline to sign the award of the Punchayet, the signature or mark of the majority shall be sufficient to give legal validity to the award. Provided always that in such cases, it shall be incumbent on such majority to admit the minority to record and attest by their mark or signature their reasons for declining to sign or mark the award passed by the majority.

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A. D. 1840. ACT IX.*

AN ACT *for amending the law administered in Her Majesty's Courts of Justice with reference to Arbitrations, Damages, and interested Witnesses.*

Passed on the 20th April 1840.

Interest may be awarded in addition to damages, &c.

II. And it is hereby enacted, that the Court on the trial of any issue, or on any inquiry of damages, in any suit before any of Her Majesty's Courts of Justice may, if it shall think fit, give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass de bonis asportatis and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

A. D. 1840.† ACT XXIII.

AN ACT *for executing within the local limits of the jurisdiction of Her Majesty's Courts, Legal Process issued by authorities in the Mofussil.*

Passed on the 30th November 1840.

Preamble.

I. Whereas great inconvenience has been experienced, in consequence of the difficulty of procuring the attendance as witnesses before the Mofussil authorities, of persons resident within the local limits of Her Majesty's Supreme Courts, and, in consequence of justice being often frustrated by reason of persons and property within such limits being exempted from process issued by such authorities, which has also occasioned inconvenience to the inhabitants within such limits in suits in the Mofussil Courts to which they are parties:—

How process of E. I. C. Courts may be executed within the limits of the Supreme Courts.

It is hereby enacted, that any Writ, Warrant, or other Process issued by any Court, Judge, or Magistrate in the

* The whole Act except Section II, repealed by Act VIII of 1868.

† See Act VIII of 1852.

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territories beyond the local limits of the Supreme Courts of Calcutta, Madras and Bombay respectively, may be executed within those limits in manner following—A copy of such Writ, Warrant, or other Process authenticated as such by the attestation of the Court, Judge, or Magistrate signing or issuing the same, accompanied by a certified translation in the English language, shall be presented to any Judge of Her Majesty's Courts, who may thereupon, under his hand and signature, indorse and direct the same to be executed within the local limits of any of Her Majesty's Courts by the Sheriff, or by any Justice of the Peace, according to the nature of such Writ, Warrant or other Process.

Sheriff how to proceed in execution of such process.

II. And it is hereby provided, that upon the delivery of every such Writ, Warrant or Process so indorsed as aforesaid to any such Sheriff as aforesaid, every such Sheriff shall make a Memorandum of the date of such delivery, and shall execute such Writ, Warrant or Process in like manner as if the same had originally issued from any of Her Majesty's Courts and had been delivered at the date as appearing by the Memorandum: and such Sheriff shall make no distinction as to priority or otherwise between the execution of any Writ, Warrant or other Process originally issued from any of Her Majesty's Courts, and the execution of any Writ, Warrant and other Process, under this Act. But every Writ, Warrant and other Process whether original, or indorsed as aforesaid, shall, amongst each other, be subject to the same rules touching the mode and order of execution as are now established in respect of Writs, Warrants, and other Process originally issued from Her Majesty's Courts of Justice.

Liability of Sheriff in such cases.

III. And it is hereby enacted, that every such Sheriff shall be liable to be proceeded against in Her Majesty's Courts of Justice for all matters touching the execution of any Writ, Warrant or other Process executed under this Act, in like manner as if the same had originally issued from any of Her Majesty's Courts of Justice. And all persons and property seized or detained under any Writ, Warrant or Process executed by virtue of this Act, shall be dealt with in like manner as if such persons or property had been

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seized or detained under the like Writ, Warrant or other Process issued from any of Her Majesty's Courts of Justice.

Punishment for obstructions of service.

IV. And it is hereby enacted, that all persons disobeying or obstructing the execution of any Writ, Warrant or other Process indorsed under this Act, shall be punishable in Her Majesty's Courts of Justice, in like manner as if the same had issued from such Courts; Provided always that, in the cases of Process for the attendance of witnesses, Her Majesty's Courts shall be governed by the like rules touching expenses and other matters as are established in regard to Subpœnas issued from such Courts.

Parties arrested under such proceedings to be delivered as directed by the writ.

V. And it is hereby enacted, in the cases of persons seized or detained by virtue of any Writ, Warrant or other Process executed under the authority of this Act by any Justice of the Peace or by any Sheriff, it shall be the duty of every such Sheriff or Justice of the Peace if so required by the indorsement of the Judge, to deliver the party in custody to such authority or persons as shall be particularly specified in such indorsement, and who shall have been charged with the execution of the Writ, Warrant or other Process by the authority originally issuing the same, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the local limits of the jurisdiction of Her Majesty's Courts.

Writ may be returned for amendment to the authority issuing it.

VI. And it is hereby provided, that in the case of any Writ, Warrant or other Process required to be indorsed under the authority of this Act, it shall be lawful for the Judge who shall be required to indorse the same, to remit the same for amendment to the authority issuing the same, if the same shall appear to be defective in any matter of form.

Judge endorsing such writ may direct bail to be taken.

VII. And it is hereby provided, that in the case of any Writ, Warrant or other Process required to be indorsed under the authority of this Act, for the seizure or detention of any person, it shall be lawful for the Judge who shall be required to indorse the same, to direct by indorsement that bail (the amount and number of sureties to be specified in such indorsement) may be taken; and for this purpose to

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call for such documents and to make such inquiry as he shall think proper.

Persons sentenced to imprisonment by mofussil authorities may be confined in jails within the jurisdiction of the Supreme Courts.

VIII.* And whereas it is expedient, that offenders sentenced by the Mofussil authorities to imprisonment with or without hard labor, should be subjected to the most improved rules of prison-discipline, which cannot, in all cases, be conveniently done except in the prisons locally situate within the jurisdiction of Her Majesty's Supreme Courts, it is hereby enacted, that all civil and criminal gaols and houses of correction within the jurisdiction of any of Her Majesty's Supreme Courts, shall, according to the nature of the case, be liable to be used by the Sheriff for the purposes of this Act, and the parties imprisoned therein under the authority of this Act shall be liable to the prison discipline thereof, and all sentences of imprisonment passed by any Judge, Court or Magistrate in the territories of the East India Company beyond the local limits of Her Majesty's Supreme Courts, may be executed in whole or in part within any of the gaols or houses of correction aforesaid, provided that a copy of the warrant of commitment or other process authorizing the imprisonment be so indorsed as aforesaid, and such indorsement contain the necessary directions.

A. D. 1841. ACT VIII.

AN ACT *to enable Her Majesty's Supreme Courts within the Territories of the East India Company to give relief against adverse claims made upon persons having no interest in the subject of such claims.*

Passed on the 21*st June* 1841.

Preamble.

I. Whereas it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in Equity against the plaintiff and

* This Section is repealed by *(Madras)* Act V of 1869, as far as it affects the Madras Presidency.

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such third party, usually called a Bill of Interpleader, which is attended with expense and delay;

Procedure in case defendant has no interest.

It is hereby enacted, that upon application made by or on the behalf of any defendant sued in any of Her Majesty's Supreme Courts in any action of Assumpsit, Debt, Detinue, or Trover, such application being made after declaration and before plea by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action in such manner as the Court (or any Judge thereof) may order or direct, it shall be lawful for the Court, or any Judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the mean time to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such other rules and orders therein as to costs, and all other matters, as may appear to be just and reasonable.

Judgment, &c. to be final.

II. And it is hereby enacted, that the judgment in any such action or issue as may be directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

Claim of third party when barred against original defendant.

III. And it is hereby enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be

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made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as to costs or other matters, as may appear just and reasonable.

Court may rescind order of single judge.

IV. And it is hereby provided that every order to be made in pursuance of this Act by a single Judge not sitting in open Court, shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge.

Single judge may refer matter to Court.

V. And it is hereby enacted, that if upon application to a Judge, in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court, and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had generally commenced by the Rule of Court instead of the order of a Judge.

Goods seized but claimed by third parties.

VI. And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby Sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases as such Sheriffs and other officers, it is therefore hereby further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in the execution under any such process or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such Sheriff or other officers made before or after the return of such process, and as well before or after any action brought against such Sheriff or other officer, to call before them by Rule of Court as well the party issuing such process as the party making such claim, and thereupon to exercise for the

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adjustment of such claims and the relief and protection of the Sheriff or other officer, all or any of the powers and authorities herein before contained, and make rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the Court.

Rules, &c. to be entered of record; force &c.; costs how recoverable.

VII. And it is hereby enacted, that all rules, orders, matters and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may together with the declaration in the cause, if any, be entered of record with a note in the margin, expressing the true date of such entry, to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such rule or order, and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *Fieri-Facias*, or *Capias ad satisfaciendum* adapted to the case, together with the costs of such entry, and of the execution if by *Fieri-Facias*, and such writ or writs may bear test on the day of issuing the same, whether in term or vacation, and the Sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court.

A. D. 1841. ACT XI.

AN ACT *for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the Service of the East India Company.*

Passed on the 5th July 1841.

Powers of single officers appointed for trial of small suits in bazars and cantonments, not to be affected.

I.* † Nothing in this Act contained shall be held to alter or affect the jurisdiction of a single officer duly authorized

* See Section II. Act III. of 1859. See also Section IX. (*Madras*) Act I. of 1866.

† See Schedule to Act XIV. of 1870.

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and appointed under the rules in force in the Madras and Bombay Presidencies for the trial of small suits in military bazars at cantonments and stations occupied by the troops of those Presidencies respectively, or the trial by punchayet of suits against military persons according to the rules in force under the Madras Presidency.

Personal actions for an amount under 200 Rupees against persons amenable to the Articles of War cognizable only in a Military Court. Proviso.

II. And it is hereby enacted, subject to the aforesaid proviso, that within the territories of the East India Company, actions of debt and other personal actions against native officers, soldiers and other persons amenable to Articles of War for the Native Forces in the Military Service of the East India Company, or residing within any station or cantonment, and carrying on any trade or business in a military bazar, shall be cognizable before a Military Court, and not elsewhere, provided the value in question shall not exceed 200 Rupees, and the defendant was a person of the description above-mentioned, when the cause of action arose, and when the suit was instituted. Provided that no suit shall be brought before any Military Court under this Act to determine any dispute of caste or concerning any right to real property.

Commanding officer to convene the courts. How they are to be composed.

III. And it is hereby enacted, that the Commanding Officer of any station or cantonment, or Officer commanding any portion of troops in the field, is authorized to convene such Military Courts. And such courts shall be composed, according to the orders of the Commander-in-Chief for the time being of the Presidency within which the station or cantonment is situate, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, and, in the latter case, with a European officer of not less than five years' standing, to superintend and record the proceedings. Provided that if there be not a sufficient number of officers to constitute a court at the station or cantonment where any cause of action may arise, or where the defendant may be residing, the suit shall be determined at the nearest station or cantonment where a Military Court can be duly constituted as aforesaid.

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IV. And it is hereby enacted, that such Military Courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month. Courts to be convened monthly.

V. And it is hereby enacted, that the forms of proceeding in every such court shall be conformable to the usages observed on trials before courts martial held for the Native Troops in the service of the East India Company as far as the same are applicable. And any such court shall have the like power of summoning witnesses as is possessed by courts martial. Provided always, that every such court shall have the power of examining the parties to any suit, and of requiring or dispensing with their attendance at its discretion. And every such court shall have the like power of taking the examinations of absent parties and witnesses as is possessed by the Civil Courts of the East India Company under Act VII of 1841,* provided that the depositions taken under a commission issued by any Military Court of Requests shall be receivable in evidence before any such court subsequently held; provided also that commissions may be issued by Military Courts of Requests under this Act pursuant to the provisions of No. VII of 1841,† notwithstanding the courts to which the commissions may be directed are not situate beyond the jurisdiction of such Military Courts. Form of proceedings. Examination of the parties and their witnesses.

VI. And it is hereby enacted, that witnesses omitting to attend, refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury, shall be tried and punished if amenable to Articles of War, by a court martial, subject to all the rules contained in such Articles of War for the punishment of such offences in regard to trials for military offences; and if not amenable to Articles of War, they may be tried and punished in the manner of the courts of the East India Company for the administration of criminal justice (whether such courts have ordinarily jurisdiction over such person in criminal matters or not) in like manner as if such offences had been committed in regard to any trial before such nearest court. Punishment of recusant witnesses, perjury and subornation of perjury.

* Repealed by Act X of 1861.

† Do. do.

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Contempt of the Court how punishable.

VII. And it is hereby enacted, that any person, civil or military, European or Native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not) the proceedings of any Military Court of Requests, shall be punishable, if amenable to Articles of War, by a Court Martial, or if not amenable to Articles of War, in the nearest of the courts of the East India Company for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not) in like manner as if the offence had been committed in regard to any proceeding of the court to which it is so referred.

Record of proceedings to be kept.

VIII. And it is hereby enacted, that a record shall be kept of proceedings in every case tried before any Military Court of Requests. And such record shall contain the substance of the evidence given, and the nature of such evidence as may have been rejected on the ground of its not being legally admissible, or relevant, or on other grounds, and the same shall be signed by the members of the said court. And such record or a copy thereof, shall, with as little delay as is practicable after the conclusion of the proceedings, be transmitted by the European President or Superintending Officer of every such court to the Officer Commanding the station or cantonment.

200 Rupees only recoverable, and judgment for that amount to bar all further claims on same account.

IX. And it is hereby enacted, that where a demand shall exceed the amount of 200 Rupees, or where several separate demands shall exceed such amount, no more shall be recoverable from any one defendant by the same plaintiff or plaintiffs, than the sum of 200 Rupees only, and the judgment in respect of any demand in a Court of Requests shall be a bar to the recovery of the same demand or of any other or further demand for the same cause of action in any other court whatever, provided that the liability accrued before the time of instituting the suit in the military court; and it shall be competent for every such military court to investigate any counter-claim alleged by any defendant. And it shall be competent for every such Military Court to allow the interest for money agreed on between the parties, provided the same does not exceed the usage of the country in ordi-

Interest.

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nary money transactions. And every contract made after the passing of this Act upon which a demand for debt exceeding 20 rupees is founded, not being money due for goods bought and delivered, shall be in writing and expressed in the language of the defendant and signed by him, or on his behalf by some other person than the plaintiff.*

Contracts for sums above 20 Rupees to be in writing.

X. And it is hereby enacted, that on failure of either of the parties to a suit to attend either personally or by representative, or to produce his witnesses according as he shall be required by any Military Court of Requests, such court, on being satisfied that the party has been duly apprized of what is required of him, may proceed to the termination of the suit in his absence. And if the decree in any such case shall be against the plaintiff, it shall not be competent for him to commence a new suit for the same cause of action.

Suits may be decided in absence of parties neglecting to proceed.

XI. And it is hereby enacted, that it shall be lawful for the Commanding Officer to whom the proceedings have been transmitted as aforesaid, to return the same for revision either by the same or another Military Court of Requests. And in every such case, the second decree shall be final, unless for error in points of law, when the same shall be transmitted to the Commander-in-Chief, who shall have power to annul the proceedings without prejudice to any future suit. Provided always that in the case of any new trial, the Court may receive evidence which was not adduced at the first trial.

Commanding officer may return decision for revision; second decree annulable only by Commander-in-Chief.

XII. And it is hereby enacted, that every plaintiff shall prefer his claim in writing, and shall deliver the same to the Station Staff Officer. The claims shall be entered in a Schedule by the Station Staff Officer, which schedule is to be sent to Adjutant of Corps or Heads of Departments two days at least before the assembly of the court, and the Adjutants or Heads of Departments shall be responsible that the defendants belonging to their respective corps or establishments have been duly summoned.

No evidence may be adduced on new trial.

How claims are to be preferred and brought on.

* See Schedule Act IX. of 1871.

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Decrees to be published in station order before execution.

XIII. And it is hereby enacted, that every decree of any Military Court of Requests shall be published in the Station Orders before the same is executed.

Execution of the decree may be general or special.

XIV. And it is hereby enacted, that the execution of decrees of Military Courts of Requests may be either general or special, according to the sentence of the court. Provided alway that the Commanding Officer may, notwithstanding the direction of the Court, order that the execution shall be general or special at his discretion.

Under general execution, debt to be paid forthwith or levied by sale of goods.

XV. And it is hereby enacted, that in cases in which the execution is to be general, the debt if not paid forthwith, shall, under the authority of the Commanding Officer in writing, to be signed by him, be levied by seizure and public sale of such of the Debtor's goods (under which term are included houses or other erections within the limits of stations and cantonments) as may be found within the limits of the station or cantonment, or elsewhere; and if sufficient goods are not to be found, the debtor, if not a soldier, shall be arrested and imprisoned in any civil gaol near to the station or cantonment, (for which purpose the provisions of Act No. II of 1840, passed for the purpose of regulating the execution of sentences of imprisonment passed by courts martial, shall be applicable) or in any other convenient place of confinement situate within the limits of the station or Cantonment, for the space of two months, unless the debt be sooner paid, and his Goods, if found within the limits of the Station or Cantonments, or elsewhere, at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt. And if the debtor be a soldier, and the debt be not liquidated by sale of his effects, accoutrements and necessaries excepted, an order may be issued for payment of the residue by monthly deduction from the pay issued to the debtor under the rules which follow.

Imprisonment of persons not soldiers.

Deduction from pay of soldiers.

Under special execution, debt to be liquidated by deductions from pay.

XVI. And it is hereby enacted, that where the execution is to be special, the debt shall be satisfied out of the pay and allowances of the debtor and not otherwise. And a certificate of the decree and direction or order thereon, certified under the hand of the Commanding Officer and

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signed by him, shall be a sufficient authority for making such stoppages. Provided always that no more than one-half of the pay and allowances of any Commissioned Officer, or than one-fourth of the pay and allowances of any Non-Commissioned Officer or Soldier, shall be stopped in any one month. Amount of deductions

XVII. And it is hereby enacted, that in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before such military courts as aforesaid, against persons so amenable as aforesaid, for any amount of demand: Provided that such military courts beyond the frontier shall be composed of European Officers—and provided that if the amount of claim shall exceed 200 Rupees, an appeal shall lie to the Court of Sudder Adawlut of the nearest Presidency, according to the rules in force with regard to appeals from subordinate Civil Courts. Beyond the frontier actions may be brought for any amount. Appeal in cases above 200 Rupees.

XVIII. Repealed by Act XIV of 1870.

A. D. 1841. ACT XIX.

AN ACT *for the protection of Moveable and Immoveable property against wrongful possession in cases of Successions.*

Passed on the 6th September 1841.

I. Whereas much inconvenience has been experienced where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property, and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession. And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful Preamble.

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title equal to that of a decision by a judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit. And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all, especially as regards moveable property. And whereas it may be expedient, prior to the determination of the summary suit, to appoint a Curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case. And whereas it will be very inconvenient to interfere with successions to estates by the appointment of Curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of regular suit;—

Persons claiming a right in property of deceased persons, may apply to judge of civil court.

It is hereby enacted, that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

Agents and the Court of Wards may likewise apply.

II. And it is hereby enacted, that it shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property as aforesaid, to make the application for relief.

What inquiry the judge is to make.

III. And it is herby enacted, that the Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be

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strong reasons for believing that the party in possession or taking forcible means for seizing possession, has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bonâ fide.

Judge may decide summarily the right to possession,

IV. And it is hereby enacted, that in case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly: provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

may appoint an officer to take temporary charge.

Judge may appoint a curator.

V. And it is hereby enacted, that in case it shall further appear upon such application and examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more Curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit, and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a Curator, and also that every appointment of a Curator in respect of any property be duly published.

In cases of land, the collector may be the curator.

For what period possession may be given to curator.

VI. And it is hereby enacted, that the Judge shall have power to authorize such Curator, either to take possession

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of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Provided always, that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession, on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

In what cases party may be continued in possession.

Security to be given by curator. His responsibility.

VII. And it is hereby enacted, that the Judge shall exact from the Curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus monies realized by the Curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always, that although security shall be required from the Curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed Curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the Curator with the powers of his office.

In cases of land, what communication the judge shall hold with the curator.

VIII. And it is hereby enacted, that, where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a

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statement of his reasons to the Court of Sudder Dewany Udawlut, and the Court of Sudder Dewany Udawlut, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

Curator may conduct suits on behalf of estate.

IX. And it is hereby enacted, that the Curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and that all suits may be instituted or defended in the name of the Curator on behalf of the estate. Provided that an express authority shall be requisite in the Sunnud of the Curator's appointment for the collection of debts or rents; but such express authority shall enable the Curator to give a full acquittance for any sums of money received by virtue thereof.

Judge may grant allowance to claimant pending inquiry.

X. And it is hereby enacted, that pending the custody of the property by the Curator, it shall be lawful for the Judge to make such allowances to parties having a *prima facie* right thereto, as upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Curator to render monthly and quarterly accounts.

XI. And it is hereby enacted, that the Curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the judge.

Curators' accounts open to inspection.

XII. And it is hereby enacted, that the accounts of any such Curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such Curator. And if it be found that the accounts of any such Curator are in arrear, or if they shall be erroneous, or incomplete, or if the Curator shall not produce them whenever he shall be ordered to do so by the judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Punishment for false accounts, or for delay in rendering.

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In what cases several curators may be appointed.

XIII. And it is hereby enacted, that after the judge of any district shall have appointed any Curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other Curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another Curator in respect of the residue or any portion thereof: provided always that no Judge shall appoint a Curator, or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided further, that if two or more Curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sudder Dewany Udawlut to make such order as it shall think fit for the appointment of one Curator of the whole property.

Limitation.

XIV. And it is hereby provided, that this Act shall not be put in force, unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

Directions of deceased proprietors to be attended to.

XV. And it is hereby enacted, that this Act shall not be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but, in every such case, so soon as the Judge having jurisdiction over the property of a deceased person, shall be satisfied of the existence of such directions, he shall give effect thereto.

Reservation of the rights of the Court of Wards.

XVI. And it is hereby enacted, that this Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession and also to appoint a Curator, shall invest the Court of Wards with the

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Curatorship of the estate pending the suit, without taking such security as aforesaid; and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Not to bar regular suits.

XVII. And it is hereby provided, that nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Summary decision final as to possession.

XVIII. And it is hereby enacted, that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but that for this purpose it shall be final, not subject to any appeal or order for review.

Local governments may appoint local curators.

XIX. And it is hereby enacted, that it shall be lawful for the Government of the respective Presidencies to appoint public Curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public Curator or Curators in all cases where the choice of a Curator is left discretionary with him under the preceding provisions of this Act.

XX. Repealed by Sec. XIII., Act VIII. of 1855.

A. D. 1841. ACT XXIV.*

AN ACT *for the greater uniformity of the Law administered by Her Majesty's Supreme Court with that administered in England, in regard to the undisposed residue of the Effects of Testators; Illusory Appointments; the transfer of Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons, and other like matters.*

Passed on the 18th October 1841.

XI. Geo. and I. Wil. IV. chap. 40 extended

I. It is hereby enacted, that the Statute XI. George IV. and I. William IV, Ch. 40, entitled "An Act for making

* Sections I, II, and IV of this Act, except so far as they relate to illusory appointments and infants, repealed by Act VIII of 1868.

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better provision for the disposal of the undisposed residues of the Effects of Testators," shall be extended to the territories of the East India Company as far as it is applicable to the same. Provided that this Act shall take effect from the first day of January next, which day is substituted for the first day of September mentioned in the Statute.

XI. Geo. IV. and I. Wil. IV. chap. 46 and 65 extended.

II. And it is hereby enacted, that the Statute XI. George IV. and I William IV. Ch. 46, entitled "An Act to alter and amend the Law relating to Illusory Appointments," and the Statute XI. George IV. and I. William IV. Ch. 65, entitled "An Act for consolidating and amending the Law relating to property belonging to infants, feme coverts, idiots, lunatics and persons of unsound mind" shall, from the first day of January next, be extended to the territories of the East India Company, as far as it is applicable to the same.

III. Repealed by Section I. Act XXVII. of 1866.

Secs. X, XI. Geo. IV. and I. Wil. IV. chap. 47 extended.

IV. And whereas it is expedient to adopt the amendments of the English law touching the delay of actions, suits, or other proceedings, by reason of the parol demurring; and touching such conveyances made by infants under order of Court; it is hereby enacted, that Sections 10 and 11 of XIth Geo. IV. and I. William IV., Ch. 47, entitled "An Act for consolidating and amending the Laws for facilitating the payment of debts out of Real Estate," shall from the first day of January next, be extended to the territories of the East India Company, as far as it is applicable to the same.

Scope of Act.

V. And it is hereby provided, that this Act shall not be construed to affect any case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof, or any proceedings at law or in equity commenced before the first day of January next.

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A. D. 1841. ACT XXVI.

AN ACT *for extending in cases governed by English Law certain provisions of the Statute 3d and 4th William IV. Ch. XLII, entitled "An Act for the further amendment of the Law and the better advancement of Justice."*

Passed on the 18th October 1841.

Actions for injuries done by or to property of deceased.

I. Whereas there is no remedy provided in cases governed by English law for injuries to the real estate of any person deceased, committed in his lifetime, nor for certain wrongs done by a person deceased in his lifetime to another in respect of his property, real or personal; for remedy thereof it is hereby enacted, that an Action of trespass or trespass on the case, as the case may be, may be maintained by the Executors, or Administrators of any person deceased, for any injury to the real estate of such person committed, in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and the damages when recovered, shall be part of the personal estate of such person; and further that an action of trespass or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person.

II. Repealed by Act VIII of 1868.

Actions against executors, &c.

III. And it is hereby enacted, that an action of debt on simple contract shall be maintainable in any of Her

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Majesty's Supreme Courts against any Executors or Administrator.

In what cases sum by way of compensation may be paid.

IV. And it is hereby enacted, that it shall be lawful for the defendant in all personal actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauching of the plaintiff's daughter or servant), by leave of any of Her Majesty's Supreme Courts, where such action is pending, or a Judge of any of the said courts, to pay into court a sum of money by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading as the said Judges or such Courts respectively shall by any rules or orders by them to be from time to time made, order and direct.

V and VI. Repealed by Act VIII. of 1868.

Award of damages in the nature of interest.

VII. And it is hereby enacted, that every such court as aforesaid on the trial of any issue, or on any inquisition of damages may, if they shall think fit, give damages in the nature of interests, over and above the value of the goods at the time of the conversion or seizure, in all actions of Trover or Trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

Executors, &c. may distrain for arrears of rent.

VIII. And it is hereby enacted, in cases which would be governed by English law, that it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

Arrears may be distrained when.

IX. And it is hereby enacted, that such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from

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whom such arrears become due: provided also, that all and every the powers and provisions of law relating to distress for rent shall be applicable to the distresses so made as aforesaid.

A. D. 1841. ACT XXVII.

AN ACT *for appropriating the unclaimed Dividends on Insolvent Estates.*

Passed on the 18*th October* 1841.

I. Whereas pursuant to the Orders of the Courts for the Relief of Insolvent Debtors at the several Presidencies, divers sums on account of unclaimed dividends on insolvent estates have from time to time been paid over by the assignees of such insolvent estates into the hands of the Accountant General and Sub-Treasurer of the East India Company at such several Presidencies, with the privity of the Accountant General of the said Insolvent Courts, to the credit of the persons named in the schedules as creditors of such insolvents respectively;—and whereas it is expedient that in the event of no claim being established to such unclaimed dividends or any part thereof, within a reasonable time, such dividends should be distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively:—

Unclaimed dividends when may be distributed.

It is therefore enacted, that it shall be lawful for the said Courts of Insolvent Debtors respectively in the event of no claim being established to such dividends or any part thereof within six years after any dividend shall have been so paid over, as aforesaid, to order the same to be repaid to such assignees, to be by them distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively, and to order such claims to be expunged from such schedules. Provided that this Act shall not affect the right of any party to be paid such dividends out of any future assets, which may come to the hands of the assignees, together with any future dividends which may be declared on such insol-

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vent estates respectively in the event of any such claim being afterwards established.

Before distribution to be advertised.

II. And it is hereby enacted, that no such unclaimed dividend shall at any time be distributed under this Act unless a statement of such unclaimed dividends be previously published in manner following: one year at least before making any such division as aforesaid, a statement shall be published three times in the English language, and also in one or more native languages in the Official Gazettes of the respective Presidencies, which statement shall contain the names and descriptions as contained in the schedules of all parties in respect of whose claims dividends are reserved, together with the amount of such claims respectively, and shall specify whether any former dividend or dividends have been paid in respect thereof, and whether any proof shall have at any time been made of the debt whereby any dividend may have accrued. Provided always that this Act shall not authorize the distribution of any such dividend except where no person shall at any time have substantiated any claim to the debt in respect of which such dividend may have become due.

III. & IV. Repealed by Act VIII. of 1868.

A. D. 1842. ACT IX.

AN ACT *for extending the Statute Ch. XXI. 4th and 5th of Queen Victoria in certain cases to the Territories of the East India Company.*

Passed on the 2nd September 1842.

4 and 5 Vict. 21, extended.

I. It is hereby enacted, that the Statute Ch. XXI of the 4th and 5th years of the reign of Queen Victoria, entitled "An Act for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same parties," shall be extended to the territories of the East India Company from the 1st day of October next; provided always that this Act shall not be construed to affect any case which would not have been governed by the Law of England before the passing of the aforesaid

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Statute, if this Act had not passed, and provided that every deed or instrument of release taking effect under this Act shall be expressed to be made in pursuance thereof, and it shall not be necessary that it be expressed to be made in pursuance of the Statute aforesaid.

AN ACT *for rendering a Release as effectual for the conveyance of Freehold Estates as a Lease and Release by the same Parties.*

[18*th May* 1841.]

"Whereas it is expedient to lessen the expense of conveying Freehold Estates;" Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That every Deed, or Instrument or Release of a Freehold Estate, or Deed, or Instrument, purporting or intended to be a Deed, or Instrument of Release of a Freehold Estate, which shall be executed on or after the 15th day of May 1841, [and shall be expressed to be made in pursuance of this Act,] shall be as effectual for the purposes therein expressed, and shall take effect as a conveyance to uses or otherwise, and shall operate in all respects both at Law and Equity, as if the releasing party or parties who shall have executed the same had also executed in due form a Deed or Instrument of Bargain and Sale, or Lease for a year for giving effect to such Release, although no such Deed or Instrument of Bargain and Sale or Lease for a year shall be executed: Provided that every such Deed or Instrument so taking effect under this Act shall be chargeable with the same amount of Stamp duty as any Bargain and Sale or Lease for a year would have been chargeable with (except progressive Duty) if executed to give effect to such Deed or Instrument, in addition to the Stamp Duties which such Deed or Instrument shall be chargeable with as a Release or otherwise under any Act or Acts relating to Stamp Duties.

Recital of lease for a year conclusive evidence of it.

II. "And whereas many Deeds or Instruments of Bargain and Sale or Leases for a year, to give effect to Deeds or Instruments of Release of Freehold Estates heretofore

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"executed, have been lost or mislaid," Be it enacted, that where, in or by any Deed or Instrument of Release of Freehold Estates executed before the 15th day of May 1841, any Deed or Instrument of Bargain and Sale or Lease for a year for giving effect to such Deed or Instrument of Release shall be recited, or by any mention thereof in such Deed or Instrument of Release appear to have been made or executed, such recital or mention thereof shall be deemed and taken to be conclusive Evidence of the Deed or Instrument of Bargain and Sale or Lease for a year so recited or mentioned having been made and executed; and such Deed or Instrument of Release shall also have the like effect as if the same had been executed after the 15th day of May 1841, whether such Deed or Instrument of Bargain and Sale or Lease for a year shall or shall not have been lost or mislaid, or may or may not be produced: Provided always, that this Act shall not prejudice or affect any proceedings at Law or in Equity pending at the time of the passing of this Act, in which the validity of any Bargain and Sale or Lease for a year shall be in question between the party claiming under such Bargain and Sale or Lease for a year and the party claiming adversely thereto, and such Bargain and Sale or Lease for a year if the result of such proceedings shall invalidate the same, shall not be rendered valid by this Act.

Freehold, what it means.

III. And be it enacted, that in the construction of this Act the word "Freehold" shall have not only its usual signification, but shall extend to all Lands and Hereditaments for the conveyance of which, if this Act had not been passed, a Bargain and Sale or Lease for a year, as well as a Release, would have been used.

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A. D. 1842. ACT XII.

AN ACT *for the better Regulation of Military Bazars, and defining the liabilities of Camp Followers.*

Passed on the 28th October 1842.

No unregistered person shall recover in the Military Courts of Requests.

I. It is hereby enacted, that no person residing within the limits of any military cantonment and carrying on trade therein, or who shall have been a trader at any military cantonment, shall be allowed to recover in any Military Court of Requests for the Native Troops of the East India Company, held within any such cantonment, any debt contracted in the way of trade, or for the loan of money, within any such cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt shall at the time of contracting thereof have been registered as a military bazarman within any such cantonment.

All camp-followers amenable to Acts XI. and XXVIII., 1841.

II. And it is hereby declared, that all persons serving with any part of the Army, and receiving public pay in any capacity, menial servants, and other camp followers of every description, shall be subject to the provisions of Acts No. XI of 1841, and No. XXVIII of 1841, in like manner as enlisted soldiers.

A. D. 1843. ACT V.

AN ACT *for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.*

Passed on the 7th April 1843.

No person to be sold as a slave in satisfaction of a decree, or a revenue demand.

I. It is hereby enacted and declared, that no public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person or the right to the compulsory labour or services of any person on the ground that such person is in a state of slavery.

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No right of slavery to be enforced in Company's Courts.

II. And it is hereby declared enacted, that no rights arising out of an alleged property in the person and services of another as a slave, shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Rights possessed by, or derived from, a slave, protected.

III. And it is hereby declared and enacted, that no person who may have acquired property by his own industry or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave.

Offences against slaves penal as if done against a free man.

IV. And it is hereby enacted, that any act which would be a penal offence if done to a free man, shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

A. D. 1843. ACT VII.

AN ACT *for abolishing the Provincial Courts of Appeal and Circuit in the Presidency of Fort St. George, and for establishing new Zillah Courts to perform their functions; for establishing Courts constituted according to Regulations I. and II. and Regulations VII. and VIII. of* 1827, *in place of the existing Civil and Criminal Zillah Courts, and for extending the Civil Jurisdiction of such Courts.*

Passed on the 28th April 1843.

Provincial Courts of Appeal and Circuit in the Madras Presidency to be abolished, and new Zillah Courts to be established in their stead.

I.* It is hereby enacted, that the Governor in Council of Fort St. George be empowered by an Order in Council to abolish the Provincial Courts of Appeal and Circuit, and the Civil and Criminal Zillah Courts, now existing in that Presidency, and to establish new Zillah Courts to perform the civil and criminal functions now performed by the said Provincial Courts, and to re-place the existing Civil and Criminal Zillah Courts, by Courts constituted according to

* So much of this section as refers to Subordinate Judges and Sudder Ameens repealed by Act VIII. of 1868.

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Regulations I. and II. of 1827, or Regulations VII. and VIII. of 1827, at his discretion.

New Zillah Courts to be superintended by one Judge to be styled Civil and Session Judge.

II. And it is hereby enacted, that the Zillah Courts established under this Act, shall be superintended by one Judge, who shall be styled Civil and Session Judge of the Zillah.

And to exercise the same appellate jurisdiction within their limits, as the Provincial Courts of Appeal.

CIVIL JURISDICTION.

III. And it is hereby enacted, that every Zillah Court established under this Act, shall exercise within the limits assigned to them, respectively, by the Order in Council by which they are constituted, the same civil jurisdiction as is now exercised by the Provincial Courts of Appeal, except the original jurisdiction vested in those Courts in suits for an amount or value less than 10,000 Company's rupees, and shall be vested with the same authority, and shall be subject to the same rules and restrictions as such Provincial Courts of Appeal, except as hereinafter mentioned.

Original jurisdiction of Provincial Courts in suits for less than 10,000 Rupees transferred to Subordinate Zillah Courts.

IV.* And it is hereby enacted, that the original jurisdiction vested in the Provincial Courts of Appeal in suits for an amount or value less than 10,000 Company's rupees, shall be transferred to the subordinate Zillah Courts constituted according to Regulations I. and VII. of 1827.

V. Repealed by Act VIII of 1868.

Zillah Court to take cognizance of Appeals reserved from the jurisdiction of Principal Sudder Ameens.

VI. And it is hereby enacted that in every Zillah in which there is a subordinate Court constituted according to Regulation VII of 1827, the Zillah Court shall take cognizance of the appeals which by Section VIII of that regulation are reserved from the jurisdiction of such Court.

Principal Sudder Ameens how to act in cases where they have to call upon Collectors, or other European officers in matters before their Courts.

VII. *First.*—And it is hereby enacted, in modification of Section IX. Regulation VII of 1827, that in all cases in which a Principal Sudder Ameen has occasion to call upon a Collector, or Assistant Collector, or other European officer of Government, to do anything in any matter before his Court, he shall transmit to such officer an extract from the proceedings of the Court, containing a brief abstract of the case, and specifying what is required to be done by him,

*So much of this section as refers to Subordinate Judges and Sudder Ameens repealed by Act VIII. of 1868

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with a request that he will comply therewith, and that he will return an answer stating what he has done within a certain time, and such officer shall comply with the requisition so conveyed to him, in the same manner as if it had been accompanied by a precept from the Zillah Judge.

And what course to take if such officers do not comply with their requisition.

Second.—Provided that if such officer does not comply with such requisition, the Principal Sudder Ameen shall report the case to the Zillah Judge, who shall proceed thereon as if the requisition had been made by a precept from himself.

Appeals to lie to the Zillah Courts from the decrees of Subordinate Civil Courts and of Sudder Ameens and District Moonsiffs.

VIII.* *First.*—And it is hereby enacted, that appeals shall lie to the Zillah Court from all decrees or orders of Subordinate Civil Courts constituted according to Regulations I. and VII. of 1827, and of Sudder Ameens and District Moonsiffs, in cases in which appeals are now allowable, but such appeals must be preferred within the period of 30 days, to be calculated as prescribed in the existing regulations.

Sudder Udalut may order appeals from the decisions of District Moonsiffs to be preferred to the Subordinate Zillah Courts.

Second.—Provided that whenever a Court constituted according to Regulation I. of 1827, or according to Regulation VII. of 1827, is established in any Zillah at a place remote from the station of the Zillah Court, the Sudder Udalut, with the sanction of the Governor in Council, may order appeals from the decisions and orders of District Moonsiffs stationed within the limits assigned to such Court, to be preferred to such Court. But it shall be competent to the Zillah Judge, at his discretion, to call up to his own Court, from time to time, appeals received by any such Court, and to dispose of them himself.

Zillah Judge may refer to a Subordinate Judge or Principal Sudr Ameen appeals from District Moonsiffs.

Third.—Provided also that the Judge of any Zillah Court may refer to any Subordinate Judge or Principal Sudder Ameen in the Zillah, any appeals from District Moonsiffs which may be filed in the Zillah Court.

A summary appeal may be preferred to the Zillah Judge from the order of a Subordinate Judge or Principal Sudder Ameen dismissing an appeal without reference to its merits.

Fourth.—Provided also that if any such appeal from a decision or order of a District Moonsiff, which may have been under this section referred for decision, or preferred in the first instance to a Subordinate Judge or Principal Sudder

* So much of this section as refers to Subordinate Judges and Sudder Ameens repealed by Act VIII. of 1868.

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Ameen, be dismissed without any decision being come to on its merits, it shall be competent to the party aggrieved by such order of dismissal to prefer a summary appeal from it to the Judge of the Zillah, and it shall be the duty of the said Zillah Judge to hold such proceedings on such summary appeal as he may consider proper; and having satisfied himself that the order dismissing the appeal has been passed without sufficient cause being shewn for such dismissal, it shall be competent for such Zillah Judge to issue his precept to the Court by which the appeal may have been dismissed, requiring that the appeal shall be again admitted on the file, and a decision passed upon it after mature consideration of its merits.

Appeals from Zillah Courts to lie to the Sudder Udalut.

IX. And it is hereby enacted, that appeals, regular and summary, from decisions and orders of the Zillah Courts, shall lie to the Sudder Udalut, under the same rules and restrictions as are applicable to similar appeals to the Sudder Udalut from the Provincial Courts of appeal.

X. and XI. Repealed by Act X of 1861.

Translations of papers not required to be furnished to the Sudder Udalut in any case.

XII. And it is hereby enacted, that any provisions of the existing regulations which require inferior Courts to furnish the Sudder Udalut with translations of papers written in the vernacular languages of the country, which they may transmit to that Court in appeals and other cases, be rescinded.

Processes of the Sudr Udalut under Sections XIII and XIV Reg. V. of 1802 to be directed to the Zillah Courts.

XIII. And it is hereby enacted, in modification of Sections XIII. and XIV., Regulation V. of 1802, that all processes and orders therein described which may issue from the Sudder Udalut, shall be directed to the Zillah Courts established under this Act.

XIV. Repealed by Act X of 1861.

All other processes of the Sudr Udalut or of their own Courts to be served by the officers of the Zillah Judge.

XV. And it is hereby enacted, that all other processes issued by the Sudder Udalut and directed to the Zillah Court, or originating in the Zillah Court, shall be served under the orders of the Zillah Judge by the proper officers of the Court.

XVI. Repealed by Act VIII of 1868.

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XVII. *First.* Repealed by Act X of 1861.

Courts may employ District Moonsiffs for the purposes mentioned in Section LX and LXI, Reg. VI of 1816.

Second.—Provided that District Moonsiffs may be employed by Subordinate Judges and Principal Sudder Ameens, as well as by Judges of Zillah Courts, in the manner and for the purposes specified in Sections LX. and LXI., Regulation VI. 1816.

XVIII. and XIX. Repealed by Act X. of 1861.

Zillah Judges may refer to Sub Judges and P. S. Ameens, applications for the execution of decrees of district Punchayets.

XX.* And it is hereby enacted, that the Judges of Zillah Courts may refer to the Subordinate Judges and Principal Sudder Ameens, applications for the execution of decisions of District Punchayets preferred under Section XVII. Regulation VII. of 1816.

May pass orders on complaints preferred under Sec. XI., Reg. VII. of 1816.

XXI. And it is hereby enacted, that it shall be competent to Judges of Zillah Courts to pass orders of their own authority on complaints preferred under Section XI, Regulation VII, 1816, according to Clause 4 thereof.

And also on complaints preferred under Section XXVII, Reg. VII of 1832.

XXII. And it is hereby enacted, that the Zillah Judge shall be competent to receive and pass orders of his own authority on complaints preferred under Section XXVII, Regulation VII, 1832.

Civil Actions and Criminal prosecutions against Moonsiffs and Sudder Ameens to be brought before Zillah Courts.

XXIII.* And it is hereby enacted, that civil actions and criminal prosecutions under Clauses 1 and 2, Section VIII. Regulation VI, 1816, with respect to District Moonsiffs, and as extended by Section XIII, Regulation VIII, 1816, with respect to Sudder Ameens, shall be brought before the Zillah Courts established under this Act.

XXIV. Repealed by Act VIII of 1868.

XXV. Repealed by Act X of 1861.

Criminal jurisdiction of Zillah Courts.

XXVI. And it is hereby enacted, that the judges of the Zillah Courts established under this Act shall exercise within the limits assigned to those courts respectively, the same criminal jurisdiction as is now exercised by the judges of the Courts of Circuit and; shall be vested with the same authority, and subject to the same rules and restrictions, as far as they are applicable and consistent with this Act.

* So much of these sections as refer to Subordinate Judges and Sudder Ameens repealed by Act VIII of 1868.

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XXVII. Repealed by Act XVII. of 1862.

XXVIII. Repealed by Act VIII. of 1868.

XXIX. to XXXIV. Repealed by Act XVII. of 1862.

XXXV. Repealed by Act XIX. of 1868.

XXXVI. & XXXVII. Repealed by Act XVII. of 1862.

XXXVIII. And it is hereby enacted, that prosecutions against Magistrates and their Assistants under Section XLIII. Regulation IX, 1816, shall be instituted in the Zillah Courts established under this Act.

Prosecutions against Magistrates and their assistants to be instituted in the zillah courts.

XXXIX. & XL. Repealed by Act XXIV. of 1859.

XLI. to XLIII. Repealed by Act XVII. of 1862.

XLIV.* And it is hereby enacted, that in any zillah in which the Governor in Council of Fort St. George deems it expedient to establish the Zillah Court, and the court or courts under subordinate judges, or principal sudder ameens, at separate stations, it shall be competent to the said Governor in Council, by an order in council, to authorize the session judge to take cognizance of all criminal cases subject ordinarily to the jurisdiction of the subordinate courts, as well as cases subject to his own jurisdiction, which shall be sent to him by the magistrate or officers of police of such talooks as shall be therein indicated, and dispose of such cases according to the rules applicable to them respectively.

In what cases session judges to discharge functions of subordinate courts.

XLV. & XLVI. Repealed by Act VIII. of 1868.

XLVII. And it is hereby enacted, whenever the Governor in Council of Fort St. George shall establish a court under a European Principal Sudder Ameen at cochin, such Principal Sudder Ameen shall exercise within the jurisdiction assigned to him all the powers of a criminal court constituted according to Regulation II. of 1827, and also all the powers of a Joint Magistrate.

European Principal Sudder Ameen at Cochin to exercise the powers of a criminal court constituted under Regulation II. of 1827, and of a Joint Magistrate.

XLVIII. & XLIX. Repealed by (*Madras*) Act II. of 1868.

* So much of this section as refers to subordinate judges and sudder ameens repealed by Act VIII. of 1868.

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What rules the subordinate Officers and Vakeels of Zillah Courts to be subject to.

L. And it is hereby enacted, that the subordinate officers and vakeels, who shall be appointed to the Zillah Courts established under this Act, shall be subject to the same rules as are applicable to the subordinate officers and vakeels of the Provincial Courts of Appeal.

LI. Repealed by Acts XVII. of 1862 and XI. of 1864.

Governor in Council may appoint Assistant Judges to Zillah Courts.

LII. And it is hereby enacted, that the Governor in Council of Fort St. George may appoint an Assistant Judge to any Zillah Court to whom the Judge shall have authority to refer any appeals which may be depending before him, excepting appeals from the Subordinate Courts constituted according to Regulation I. or Regulation VII. of 1827, and such Assistant Judge shall be empowered to try and dispose of cases so referred to him under the rules applicable to the Judge.

Their powers.

LIII. Repealed by (*Madras*) Act I. of 1865.

LIV. to LVI. Repealed by Act XVII. of 1862.

A. D. 1844. ACT II.

AN ACT *respecting the Expense of preparing Copies of Proceedings in appeals.*

Passed on the 17th February 1844.

Preamble.

WHEREAS it is just and necessary that the expense of preparing copies in the English language of the proceedings in cases appealed to the Queen in Council, as now required by Section 5, Regulation XVI., 1797, and Section 34, Regulation V, 1803, of the Bengal Code; Section 5, Regulation VIII. of 1818, of the Madras Code; and Clause 6, Section C, of Regulation IV. of 1827, of the Bombay Code, should be borne by the parties prosecuting those appeals.

Expense of preparing two copies in English of the proceedings in cases of appeals to the Queen in Council from the judgments of the Sudder Court to be borne by the prosecuting parties.

I. It is hereby enacted, that in all cases of appeals to the Queen in Council from judgments delivered by the Courts of Sudder Dewanny Adawlut at Fort William, Fort St. George, Bombay, and at Allahabad, the expense of preparing two copies of all the proceedings held, and judgments or orders given in the case appealed, including the whole of the evi-

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dence and documents, and of translating into the English language such of the aforesaid proceedings, as may have been originally drawn out in the country languages, shall be defrayed by the parties prosecuting the appeal.

Appeals not admissible till deposit within proper time of a sufficient sum for covering expense of making copies.

II. And it is hereby further enacted, that the Courts of Sudder Dewanny Adawlut are empowered and required to cause the deposit by the appellant within the time allowed for furnishing Security for Costs of Appeal of such a sum as shall be sufficient to cover the expense of making the two aforesaid copies, and when such deposit shall have been made, and not till then, to declare the Appeal admitted, and to give notice thereof to the Appellant and Respondent respectively.

Vide Notes on Regulation VIII. of 1818.

A. D. 1844. ACT IX.

AN ACT *for authorizing the institution of Suits in the Courts of Principal Sudder Ameens and Sudder Ameens.*

Passed on the 13th April 1844.

I. & II. Repealed by Act X. of 1861.

When there is more than one P. S. Ameen or Sudder Ameen in any Zillah, their jurisdiction shall be defined by the judge.

III.* And it is hereby enacted that whenever there shall be more than one Principal Sudder Ameen attached to the Court of any Zillah or City Judge, and not having any special local jurisdiction, it shall be the duty of such Judge to appoint from time to time the several Moonsiffs' divisions which shall constitute the special local jurisdiction of each of such Principal Sudder Ameens, and that each of such Principal Sudder Ameens shall be empowered to take cognizance of all such Suits as are mentioned in Section I of this Act, provided the landed or other real property to which the Suit may relate shall be situated, or in all other cases the cause of action shall have arisen, or the defendant at the time when the Suit may be commenced shall reside as a fixed inhabitant within the limits of such local jurisdiction as aforesaid.

IV. & V. Repealed by Act X. of 1861.

* So much of this section as refers to Sudr Ameens in the Presidency of Fort St George, repealed by Act VIII. of 1868.

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A. D. 1845. ACT XXI.

AN ACT *respecting the appointment and powers of Agents for the suppression of Meriah Sacrifices in the Hill Tracts of Orissa.*

Passed on the 13th September 1845.

Estates in the Tributary Mehals in Cuttack placed under the jurisdiction and superintendence of the Agent for the Suppression of Meriah Sacrifices.

I. It is hereby enacted, that it shall be lawful for the Governor General in Council, by an Order in Council, to remove from the jurisdiction and superintendence of the Commissioner and Superintendent of Tributary Mehals in Cuttack, any of the Tributary Estates specified in Section 2, Regulation II of 1816 of the Bengal Code, and to place any such Estates under the jurisdiction and superintendence of such Officer (to be called the Agent for the Suppression of Meriah Sacrifices) and his subordinates, as shall from time to time be appointed by the Government of Bengal in that behalf.

Portions of the Country comprizing the South Western Frontier Agency may be placed under the Superintendent for the suppression of Meriah Sacrifices.

II. And it is hereby enacted, that it shall be lawful for the Governor General in Council, by an Order in Council, to remove from the jurisdiction and superintendence of the Agent to the Governor General, South West Frontier, any portion of the tracts of Country, comprised in that Agency, and to place any such portion under the jurisdiction and superintendence of such Officer (to be called the Agent for the Suppression of Meriah Sacrifices) and his subordinates, as shall from time to time be appointed by the Government of Bengal in that behalf.

Portions of the Country specified in Sec. II Act XXIV of 1839 and heretofore under the control of the Collectors of Ganjam and Vizagapatam may be placed under the Agent.

III. And it is hereby enacted, that it shall be lawful for the Governor General in Council, by an order in Council, to remove from the jurisdiction and superintendence of the collectors of Ganjam or Vizagapatam, exercised by them as agents to the Governor of Fort St. George under Act XXIV of 1839, any portion of the tracts of Country specified in Section II of the said last mentioned Act, and to place any such portion under the jurisdiction and superintendence of such Officer (to be called the agent for the suppression of Meriah Sacrifices) and his subordinates as shall from time to time be appointed by the Government of Fort St. George in that behalf.

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IV. And it is hereby enacted, that it shall be lawful for the Governor General in Council, by an Order in Council, to remove from the operation of the General Regulations and Laws any portion of Zillah Rajamundry, and to place any such portion under the jurisdiction and superintendence of such officer (to be called the agent for the suppression of Meriah Sacrifices) and his subordinates, as shall be appointed by the Government of Fort St. George in that behalf.

Any portion of Zillah Rajahmundry may be placed under the jurisdiction of the said Officer.

V. And it is hereby enacted, that all such agents and their subordinates as shall be appointed under this Act, shall in the exercise of their jurisdiction and superintendence, be guided by such instructions as they may from time to time receive from the Government of India through their respective Governments.

Agents and their Subordinates appointed under this Act by what authority to be guided.

VI. And it is hereby enacted, that it shall be competent to the Governor General in Council, through the Governments of the aforesaid Presidencies respectively, to prescribe such Rules as he may deem proper for the guidance of such agents and subordinates, and to determine to what extent the decision of the said agents in Civil Suits shall be final, and in what suits an appeal shall lie to the Sudder Court, and to define the authority to be exercised by the said agents in criminal trials, and what criminal cases they shall submit for the decision of the Sudder Court.

Governor General in Council may prescribe rules for the guidance of the Agents and subordinates in civil and criminal matters.

A. D. 1846. ACT I.

An Act *for amending the Law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.*

Passed on the 7th January 1846.

I. It is hereby enacted, that Section 15, Regulation XXIII, 1814, Clause Seventh, Section 2, Clause Eleventh, Section 3, Clause Fourth, Section 8, Regulation XXVI, 1814, Clause Third, Section 3, Section 7, Clause First, Section 15, Sections 23, 24, 28, 29, 32, 33, 34, 35, Clause First, Section 39, Regulation XXVII, 1814, Clause Second, Section 10,

Regulations of the Bengal Code repealed.

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Regulation XXVIII, 1814, Section 9, Regulation XIX, 1817, Section 6, Regulation XI, 1826, Section 30, Regulation V, 1831, Section 7, Regulation IX, 1831, Section II, Regulation VII, 1832, Regulation XII, 1833 of the Bengal Code, and Act XIII of 1838, be repealed.

Regulations of the Madras Code repealed.

II. And it is hereby enacted, that Clauses Second and Third, Section 14, Regulation VI, 1816, Section 7, Clause First, Section 15, Sections 23, 24, 28, 29, 32, 33, 34, 35, Regulation XIV, 1816, Clause Seventh, Section 4, Clause Eleventh, Section 5, Clause Fourth, Section 8, Regulation XV, 1816, Clause Third, Section 6, Regulation I, 1827, Clause Third, Section 6, Regulation VII, 1827, Section 5, Regulation VI, 1828, Section 4, Regulation IV, 1832 of the Madras Code, be repealed.

Regulations of the Bombay Code repealed.

III. And it is hereby enacted, that Clause Third, Section 47, Clause Second, Section 48, Section 55, Regulation II, 1827, of the Bombay Code; and so much of Clause First, Section 7, Regulation XXIX, 1827 of the same Code, as empowers the Zillah Judges of the Deccan and Kándeish to examine pleaders and grant certificates of qualification to practice in their Courts, be repealed.

Office of Pleader in the Company's Courts open to all persons of approved qualification.

IV. And it is hereby enacted, that the Office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion, provided that no person shall be admitted a pleader in any of those courts unless he have obtaned a certificate in such manner as shall be directed by the Sudder Courts that he is of good character and duly qualified for the Office, any Law or Regulation to the contrary notwithstanding.

Barristers of H. M.'s Courts in India may act as Pleaders in the Sudder Courts subject to the rules applicable to Pleaders.

V. Provided nevertheless, and it is hereby enacted, that every Barrister of any of Her Majesty's Courts of Justice in India, shall be entitled as such to plead in any of the Sudder Courts of the East India Company, subject however to all the Rules in force in the said Sudder Courts applicable to Pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

Certain Regulations of the Bengal, Madras and Bombay Codes to

VI. And it is hereby enacted, that Section 25, Regulation XXVII, 1814 of the Bengal Code, Section 25, Regulation

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XIV, 1816 of the Madras Code, and Section 52, Regulation II, 1827 of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in Section VII of this Act.

cease to be enforced except for the purpose specified in Sec. VII.

VII. And it is hereby enacted, that parties employing authorized Pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and that it shall not be necessary to specify such agreement in the vakalutnama; provided that when costs are awarded to a party in any regular Suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders, shall be calculated according to the Rules contained in the sections of regulations specified in Section VI of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular Suit decided on its merits.

Parties may settle remuneration to authorised Pleaders.

Costs awarded to parties in regular Suits or appeals and other cases how to be regulated.

VIII. And it is hereby enacted, that private agreements between parties and their Pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular Suit.

Private agreements between parties and Pleaders to be enforced by a Suit.

IX. And it is hereby enacted, that so much of Section 20, Regulation XXVII, 1814 of the Bengal Code, and of Section 20, Regulation XIV, 1816 of the Madras Code, as prescribes the rate of fees to be received by authorized Pleaders for legal opinions, be repealed; and that persons taking such opinions from authorized Pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Remuneration for legal opinions.

X. And it is hereby enacted, that whenever a Pleader has rendered himself liable to a fine in the Court of a Principal Sudder Ameen or Sudder Ameen, it shall be competent to such Principal Sudder Ameen or Sudder Ameen to impose such fine; provided that an appeal from all orders imposing such fines shall lie to the Zillah or City Judge, whose decision thereon shall be final.

Pleaders may be fined by Principal Sudder Ameens and Sudder Ameens subject to appeals to Zillah Judges.

XI. And it is hereby enacted, that the Rules applicable to Pleaders in the Courts of the Zillah and City Judges,

What rules to be applicable to Pleaders in the Moonsiffs' Courts.

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shall henceforth be applicable, so far as they are capable of application, to Pleaders in the Moonsiffs' Courts.

Moonsiffs may fine Pleaders subject to appeal to the Zillah Judge.

XII. And it is hereby enacted, that whenever a Pleader has conducted himself in such a manner in the Court of a Moonsiff as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zillah or City Judge, it shall be competent to such Moonsiff to impose such fine; provided that an appeal from all orders imposing such fines shall lie to the Zillah or City Judge, whose decision thereon shall be final.

Act not to affect Vakeels in the Village Moonsiffs' Courts or employed before the Village or District Punchayets, or before the Collectors of Zillahs.

XIII. And it is hereby enacted, that nothing in this Act contained shall apply to Vakeels who may be employed in the Courts of the Village Moonsiffs, or before the Village or District Punchayets, or before the Collectors of Zillahs, under the provisions of Regulations IV, V, VII. and XII. 1816 of the Madras Code.

A. D. 1847. *ACT VII.

AN ACT *to regulate Distresses for Small Rents in Calcutta.*

Passed on the 1st of May 1847.

I. [This section relates to the appointment of Bailiffs and Appraisers for the purposes of this Act.]

Upon Affidavit Commissioner may issue warrant for levy of rent or withhold it.

II. And it is hereby enacted, that it shall be lawful for any commissioner of the said court upon the affidavit in the form contained in the schedule to this Act annexed (marked D) of any party claiming to be entitled to arrears of rent of any house of premises situate in Calcutta not exceeding the amount of 100 Rupees, or in case of absence of such party from Calcutta, or in case of respectable females who do not appear in public, upon the affidavit of the constituted attorney of such party stating the amount of such arrears and for what time and at what rate the same became due, to issue a warrant under his hand and seal in the form contained in the schedule to this Act annexed (marked A) addressed to any one of such officers directing

* This Act has been extended, *mutatis mutandis*, to the town of Madras by Act IX. of 1850, Sec. LXXXIX.

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him to levy the amount of such rent, together with the costs of the said distress in the manner therein mentioned, provided that it shall be lawful for any of the said commissioners, upon personal examination of the party applying for such warrant, to grant or withhold the same at the discretion of the said commissioner.

Goods, &c. found on premises to be seized.

III. And it is hereby enacted, that by virtue of such warrant it shall be lawful for such officer to seize the whole or such part of the goods and chattels upon the said premises as shall be sufficient to cover the amount of the said rent, together with the costs of the said distress, and that he shall thereupon make an inventory of the goods and chattels so seized, and shall give a notice in writing in the form in the schedule to this Act annexed (marked B) to the party from whom such rent in claimed to be due, or to any other person upon behalf of such party upon the said premises that the said goods and chattels will be appraised and sold in manner therein mentioned. And that the said officer shall file in the said court true copies of the said inventory and notice, provided that it shall be lawful for the party from whom such rent is claimed to be due, at any time within five days from such seizure, to apply to any commissioner of the said court to discharge or suspend such warrant, and it shall be lawful for such commissioner to discharge or suspend such warrant accordingly, with or without costs, provided always that it shall be lawful for any of the said commissioners in his discretion to give reasonable time to such party to pay the said rent.

Party may apply for discharge or suspension of warrant.

Notice of sale.

IV. And it is hereby enacted that in default of such application, it shall be lawful for any two of such officers at the expiration of five days from such seizure, to appraise the goods and chattels so seized, and to give notice in writing in the form in the schedule to this Act annexed (marked E) of the sale thereof at such time and place as they shall direct, after an interval of not less than two days, and that they shall file in the said court a true copy of the said notice, and that the same shall be sold accordingly, and that the said officers shall forthwith after realization of the produce of the said sale, pay over the amount thereof

Disposal of proceeds.

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to the chief clerk of the said court, and the amount of such produce shall be applied in satisfaction of the sum claimed to be due, together with the costs of the said distress, and that the surplus, if any, shall be returned to the party from whom the said rent was claimed to be due, provided that it shall be lawful for such party to direct that such sale shall take place in any other manner, such party giving security for any extra costs attending such mode of sale.

Party may direct sale in particular manner.

What costs to be taken and their application.

V. And it is hereby enacted, that no costs shall be taken or demanded for such distress except those contained in the schedule to this Act annexed (marked C), and that it shall be lawful for the said commissioners to apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs and appraisers as shall appear to the said commissioners expedient, and that the chief clerk of the said court shall keep a book in which all sums received as costs upon distress made under the provisions of this Act, and all sums paid as remuneration to the said bailiffs and appraisers, and all contingent charges incurred in respect of such distress, shall be duly entered, and that the chief clerk of the said court shall also enter in the said book all sums realized by sale of the goods and chattels distrained and paid over to the landlords under the provisions of this Act.

Distress for arrears to be made under the Act: any one except an officer making distress to be guilty of misdemeanour.

VI. And it is hereby enacted, that after the passing of this Act, no distress shall be levied for arrears of rent amounting to Rupees 100, or less, except under the provisions of this Act, and that any person, except such officer as appointed, levying or attempting to levy any such distress, shall be guilty of a misdemeanour, and shall be liable to be punished by fine and imprisonment for the same in addition to any other liability he may have incurred by such trespass.

Act not to extend to revenue due to Government, &c.

VII. And it is hereby enacted, that this Act shall not extend to any arrears of rent exceeding 100 Rupees, nor in respect of any houses or premises situate out of Calcutta, nor to any rent due to Government, or to any seizure except on the premises in respect of which such rent is claimed.

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A.

In the Court of Commissioners for the Recovery of Small Debts in and for Settlement of Fort William in Bengal.

FORM OF WARRANT.

I hereby direct you to distrain the goode apd chattels on the premises of A. B., situate in———in the town of Calcutta, for the sum of——Rs., being the amount of——— month's rent due to C. D. for the same on the———day of———last according to the provisions of the Act No. VII. of 1847. Dated 1st day of May.

(Signed and Sealed).

To E. F., *Sworn Bailiff and Appraiser.*

B.

In the Court of Commissioners for the Recovery of Small Debts in and for Settlement of Fort William in Bengal.

FORM OF INVENTORY AND NOTICE.

(State particulars of goods seized.)

Take notice that I have this day seized the goods and chattels contained in the above inventory for the sum of —— Rs., being the amount of ——months' rent due to C. D., at———last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Commissioners of the Court of Requests to the contrary, the same will be appraised and sold pursuant to the provisions of the Act No. VII. of 1847.

(Signed) E. E.,
Sworn Bailiff and Appraiser.

To A. B.

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C.

In the Court of Commissioners for the Recovery of Small Debts in and for the Settlement of Fort William in Bengal.

Scale of Fees to be levied in Distraints for House Rent.

Sums sued for.	Affidavit and Warrant to distrain.	Order to sell.	Commission.	Total.	Remarks.
1 and under 5 Rs.	4 Annas.	8 Annas.	8 Annas.	R. 1 4	
5 and under 10 Rs.	8 Annas.	8 Annas.	R. 1-0.	Rs. 2 0	
10 and under 15 Rs.	8 Annas.	8 Annas.	R. 1-8.	,, 2 8	
15 and under 20 Rs.	8 Annas.	1 Rupee.	Rs. 2-0.	,, 3 8	
20 and under 25 Rs.	12 Annas.	1 Rupee.	Rs. 2-8.	,, 4 4	
25 and under 30 Rs.	1 Rupee.	1 Rupee.	Rs. 3-0.	,, 5 0	
30 and under 35 Rs.	1 Rupee.	1 Rupee.	Rs. 3-8.	,, 5 8	
35 and under 40 Rs.	1 Rupee.	R. 1-8.	Rs. 4-0.	,, 6 8	
40 and under 45 Rs.	Rs. 1-4	Rs. 2-0	Rs. 4-8.	,, 7 12	
45 and under 50 Rs.	Rs. 1-8	Rs. 2-0	Rs. 5-0.	,, 8 8	
50 and under 60 Rs.	Rs. 2-0	Rs. 2-0	Rs. 6-0.	,, 10 0	
60 and under 80 Rs	Rs. 2-8	Rs. 2-8	Rs. 6-8.	,, 11 8	
80 to 100 Rs.	Rs. 3-0	Rs. 3-0	Rs. 7-0.	,, 13 0	

The above scale is intended to include all expenses except in suits where tenant disputes the landlord's claim and witnesses have to be subpœna'd, in which case, each subpœna for sums under Rs. 40 must be paid for at 4 Annas each, and 12 Annas about that amount—and also where peons were kept in charge of property distrained, 4 Annas per day must be paid per man.

D.

In the Court of Commissioners for the Recovery of Small Debts in and for the Settlement of Fort William in Bengal.

A. B.—(Plaintiff)

versus

C. D.—(Defendant.)

A. B., inhabitant of——, in the town of Calcutta,—— maketh oath and saith, that A. D.——who is also an in-

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habitant of the town of Calcutta, is justly indebted to—— in the sum of Company's Rupees———for arrears of rent of the house and premises No.———, situated at ——, in the town of Calcutta, due for——months, to wit from—— to ——, at the rate of Co.'s Rs.——per mensem.

Sworn before me the———day of———184———

Commissioner.

E.

In the Court of Commissioners for the Recovery of Small Debts in and for the Settlement of Fort William in Bengal.

Take notice that we have appraised the goods and chattels seized on the——, under the provisions of the Act No. VII. of 1847, of which a notice and inventory had been duly served upon you under date the——, and that the said goods and chattels will be sold on the——at——pursuant to the provisions of the said Act.

(Signed) E. F.,
G. H.,
Sworn Bailiffs and Appraisers.

To A. B.

A. D. 1850. ACT IX.

An Act *for the more easy recovery of Small Debts and Demands in Calcutta, Madras and Bombay.*

Passed on the 15th of March 1850.

Preamble.

Whereas it is expedient to amend the constitution and practice, and to extend the jurisdiction, of the several Courts established at Calcutta, Madras and Bombay, for the recovery of Small Debts; it is enacted as follows:

Courts for the recovery of small debts to be holden under this Act.

I. The several Courts of Commissioners and of Requests for the recovery of small debts, now holden in the towns of Calcutta, Madras and Bombay, under the authority of the

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Charter of Justice of King George the Second, and of two Acts of Parliament, severally passed in the thirty-seventh year and fortieth year of the reign of King George the Third, and of the Regulations and Proclamations made, from time to time, for constituting and for new modelling, altering and reforming the constitution and practice of the said Courts respectively, and of Act XII, 1848, shall be holden according to the provisions of this Act, from and after such several days as shall be declared within the said towns by proclamation, to be made and published in due form of law in each of the said towns by the Governor in Council. (*a*)

Terms "Governor in Council," and "Supreme Court" defined.

II. Where in this Act the words "Governor in Council" or "Supreme Court," are used, they shall be taken to apply severally to the person or persons administering the executive government, and to the Supreme Court established under Royal Charter of each of the Presidencies of Fort William in Bengal, Fort St. George and Bombay, with reference only to the Court holden under this Act in the same Presidency.

Laws rescinded.

III. From and after the day declared in any such proclamation, all provisions of the said Charter of Justice, and Acts of Parliament, and of any Regulation, Act or Proclamation heretofore made concerning the constitution or practice of the Court, referred to in such proclamation, shall be rescinded and repealed.

Style of Court.

IV. The style of the several Courts holden under this Act, shall be the ( ) Court of Small Causes, inserting in the blank space, Calcutta, Madras or Bombay, as the case requires.

Territorial jurisdiction of Courts.

V. The jurisdiction of the several Courts holden under this Act, shall extend over the whole district now within the jurisdiction thereof respectively, and over such further district as may, from time to time, be declared by proclamation of the Governor in Council: provided that no proclama-

(*a*) The Proclamation here referred to in regard to the Court at Madras was published in the *Fort St. George Gazette* dated 19th Nov. 1850, page 1053.

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tion for extending the district of any of the said Courts be made without the previous sanction of the Governor General of India in Council.

Not to be extended without sanction of Supreme Government.

VI. Every Court holden under this Act shall be a Court of Record, and shall be deemed a Court of Requests within the meaning of Act VIII, 1841, Section VI.

Courts to be of Record and Requests.

VII. Repealed by Act XIV. of 1870.

VIII. The Governor in Council shall appoint as many persons as are necessary, not exceeding three, to be Judges of the Court, one of whom shall be a Barrister at Law, or Advocate of one of the Supreme Courts of India, or of the Court of Session in Scotland.

Appointment of Judges.

IX. No Judge appointed under this Act shall, during his continuance as such Judge, practise as an Advocate, Attorney or Vakeel in any of the Queen's Courts, or in any Court of the East India Company, or trade or traffic for his own benefit, or for the benefit of any other person, or be the partner of any person so practising, trading or trafficking.

Judge not to practise or trade.

X. The Governor General of India in Council may remove any such Judge on the application of the Governor in Council.

Removal of Judges.

XI. Any Judge or Judges of the Supreme Court of Judicature, who shall consent to aid in the execution of this Act, may exercise all the powers of a Judge appointed under this Act, and suits may be tried by him sitting in the Supreme Court under this Act, in like manner as if he were a Judge of the Court of Small Causes, and no appointment of a Judge under this Act shall be made, while it appears to the Governor in Council that the whole business of the Court can be transacted by the Judges of the Supreme Court so consenting to act.

Judges of Supreme Court may exercise powers under this Act.

XII. The duties herein directed to be performed by the Clerk and Bailiffs respectively of the Court of Small Causes shall be performed in such cases as are tried by a Judge of the Supreme Court, by such ministerial officers of the Su-

In such case Officers of Supreme Court may act as Clerk, &c.

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preme Court as shall be, from time to time, appointed by the said Judge of the Supreme Court for that purpose, and the persons so appointed shall have all the powers and protections by this Act given to the clerk and bailiffs of the Court of Small Causes respectively, and shall receive such remuneration for their services out of the fees received in the causes tried by a Judge of the Supreme Court as he shall deem reasonable, and the residue shall form part of the general fund of the Court of Small Causes.

And receive remuneration from fees.

Appointment and removal of Clerk.

XIII. There shall be a Clerk for every Court holden under this Act whom the Judges of the Court shall appoint, subject to the approval of the Governor in Council, and may remove, subject to the like approval: if necessary, additional Clerks may be appointed with the sanction of the Governor in Council.

Duties of Clerk.

XIV. The Clerk of each Court shall issue all summonses, warrants, precepts and writs of execution, and keep an account of all proceedings of the Court, and shall take charge of, and keep, an account of all Court fees, and fines payable or paid into Court, and of all monies paid into, and out of Court, and shall enter an account of all such fees, fines and monies in a book belonging to the Court, to be kept by him for that purpose, and shall monthly, or at such other times as shall be directed by the Governor in Council, submit his accounts to be audited or settled in such manner as the Governor in Council, from time to time, shall direct.

Appointment of Bailiffs.

XV. The Judges of every such Court shall, from time to time, appoint a sufficient number of persons to be Bailiffs of the Court, not exceeding the number, from time to time, allowed by the Governor in Council, and may at their pleasure suspend or dismiss any Bailiff so appointed.

Duties of Bailiffs.

XVI. The Bailiffs shall attend every sitting of the Court, for such time as shall be required by the Judges, and shall serve all the summonses and orders, and execute all the warrants, precepts and writs, issued out of the Court; and shall, in the execution of their duties, conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court.

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Clerk, &c. not to trade or act as attorney under penalty to be forfeited to party suing.

XVII. Every Clerk, or other Officer of any such Court, who shall, by himself or by any partner, or in any way, directly or indirectly, be concerned or act as Attorney, or Vakeel, or be concerned in any trade or profession on his own account, or for any other person, shall forfeit and pay the sum of Five Hundred Rupees to any person who shall sue for the same in the Supreme Court.

See Act XIV. of 1870.

Clerk and Bailiffs to give security.

XVIII. The Clerk and Bailiffs shall give security for such sum, and in such manner and form, as the Governor in Council, from time to time, shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

Fees to be paid and how credited.

XIX. There shall be payable in the Courts holden under this Act the fees set forth in the annexed Schedule beside the sum of Two Annas in the Rupee on the amount of the sum claimed, which fees shall be paid over to an account to be termed the General Fund of the Court.

Fees when to be paid and by whom.

XX. The rateable fee or commission shall be paid by the plaintiff before the summons issues; the other fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding: if the plaintiff recovers a less sum than he has demanded, the defendant shall not, in any case, be required to repay to him more than the fees and commission calculated upon the sum recovered. If the case is settled by agreement of the parties, before hearing, half the amount of the fees paid up to that time shall be returned to the parties by whom they have been severally paid. The Judges of the said Court may at their discretion grant summons to poor plaintiffs without deposit, or with a partial deposit of fees and commission, and also may remit costs wholly or partially to poor suitors.

Poor plaintiffs may be partially or wholly exempted.

Government may lessen and again increase fees.

XXI. The Governor in Council may, at any time, lessen the amount of the fees to be taken in the Courts holden under this Act in such manner as to him shall seem fit, and

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may again increase such fees, so that the scale of fees given in this Act be not in any case surpassed.

Government to make rules for securing money.

XXII. The Governor in Council shall, from time to time, make such rules as to him shall seem meet for securing the balances, and other sums of money in the hands of any officers of every Court holden under this Act, and for the due accounting for and application of all such balances and other sums of money.

Court to sit daily, holidays excepted.

XXIII. The Courts shall sit daily, except on Sundays, Christmas day and Good Friday, and on native or other holidays, which the Governor in Council shall direct the Court to observe; and each of the Judges may sit apart from the others or with either of them, at the same time or at different times; and any one or two of the said Judges so sitting apart shall have all the judicial authority which is herein given to all the Judges.

Judges when sitting apart to exercise individually the judicial power given to all.

Court to have a seal and to impress processes with it.

XXIV. A seal shall be made for every Court holden under this Act, under the direction of the Governor in Council, and all summonses and other process issuing out of the Court shall be sealed or stamped with the seal of the Court; and every person, who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons, or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false color or pretence of the process of the said Court, shall be guilty of felony.

Forging of seal felony.

Pecuniary jurisdiction of Court.

XXV. All suits, where the debt or damage claimed or value of the property in dispute is not more than Five Hundred Rupees, whether on balance of account or otherwise, may be brought in the Court of Small Causes; and all such suits brought in the said Court shall be heard and determined in a summary way, and every defence which would be deemed good in the Supreme Court sitting as a Court of Equity shall be a good bar to any legal demand in the Court of Small Causes. Provided always, that the Court shall not have jurisdiction in any matter concerning the revenue, or

Matters of revenue, &c. excepted.

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concerning any act ordered or done by the Governor, or Governor General, or any Member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor General or Governor in Council, or concerning any act ordered or done by any Judge or Judicial Officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court, or any such Judge or Judicial Officer, or in any suit for libel or slander.

What summons to contain, &c.; what to be good service.

XXVI. On the application of any person desirous to bring a suit under this Act, the Clerk of the Court shall issue under the seal of the Court a summons which shall be numbered, and shall set forth the names of the plaintiff and defendant, the cause of action, with such particulars as shall be from time to time directed by the Rules of the Court, and the amount sued for, and shall be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules for regulating the practice of the Court; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such summons shall vitiate the same, if the person or place be therein described so as to be commonly known.

How and when misstatements in summons may be rectified.

XXVII. No misstatement of the cause of action in the summons issued under this Act shall vitiate the same, and the Judges of the Court may, in their discretion, rectify such misstatement as soon as discovered, and alter the record accordingly; and if the defendant, or one of the defendants be present in Court at the time of such discovery, the hearing of the cause after the record shall have been so altered, shall be proceeded with as if no such misstatement had happened, but in the absence of the defendant or of all the defendants, a new summons of the same number and date as the original summons shall be issued with the altered statement of the cause of action.

Who within jurisdiction of Court.

XXVIII. All persons shall be deemed within the jurisdiction of the Court, who dwell or carry on their business

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or work for gain within the district of the Court at the time of bringing the action, or who did so dwell or carry on their business or work therein at the time when the cause of action arose, or within six months before the time of bringing the action for causes of action which arose within the same time.

How summons to be served beyond jurisdiction.

XXIX. Any summons or other process of any of the said Courts, service of which is needed out of the district of the Court, may be exhibited in any Court of Law, or before any Magistrate, and shall be thereupon endorsed by the Magistrate or Judge of such Court; and, when so endorsed, may be served in like manner as any order or process from such Court or Magistrate; and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which such summons or other process shall have issued within the jurisdiction of the Court for which he acts.

How service of summons to be proved.

XXX. Service of any summons or other process of the Court, which shall require to be served out of the district of the Court, may be proved by affidavit or solemn affirmation, purporting to be sworn or made before any Judge or Magistrate; and, in every case of the unavoidable absence of the Bailiff by whom any summons or other process of the Court has been served, the service of such summons or other process may be proved, if the Judges think fit, in the same manner as a summons served out of the district of the Court.

In what cases Minors may sue.

XXXI. Any minor may prosecute a suit in any Court holden under this Act for any sum of money not greater than Five Hundred Rupees, which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

Jurisdiction to extend to cases of partnership, debt, &c.

XXXII. The jurisdiction of the Court shall extend to the recovery of any demand, not exceeding the sum of Five Hundred Rupees, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy or of any legacy under a will.

How and when Executor or Administrator may sue.

XXXIII. Any Executor or Administrator may sue and be sued in any Court holden under this Act, in like manner

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as if he were a party in his own right; and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court in the like case: but no Executor or Administrator shall be summoned in that capacity within six months after the death of the person whose Executor or Administrator he is.

Cause of action not to be divided but excess may be abandoned.

XXXIV. A plaintiff shall not be allowed to divide any cause of action, for the sake of bringing two or more suits in any of the said Courts; but any plaintiff, having cause of action for more than Five Hundred Rupees, may abandon the excess, which shall be entered in the record, and stated in the summons, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding Five Hundred Rupees; and the judgment of the Court shall be in full discharge of all demands in respect of such cause of action; and entry of the judgment shall be made accordingly.

Who not liable to arrest, &c.

XXXV. The Governor General and Members of the Supreme Council of India, the Governors and Members of Council of the Presidencies of Fort William in Bengal, Fort St. George and Bombay respectively, and the Chief Justice and Judges of the several Supreme Courts established therein by Royal Charter, shall not be liable to arrest or imprisonment by process issuing out of any Court holden under this Act, and no writ or process shall be sued out of the said Court against any of the persons privileged by Act I., 1844, (*a*) or Act XVIII, 1848, (*b*) without the consent of the Governor in Council.

Proviso.

Service of summons on one of several jointly liable sufficient.

XXXVI. Where any plaintiff shall have any demand answerable under this Act, whether founded on contract or wrong, against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstand-

(*a*) See Act XIV. of 1870.—This Act ceased to have effect from the date of the death of the late Nabob of the Carnatic; and in its stead Act XXXVII of 1858—*an Act to continue certain privileges and immunities to the family and retainers of His late Highness the Nawab of the Carnatic*, has come into operation.

(*b*) *For continuing certain privileges to the family of the Nabob of*

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ing that others, jointly liable, may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the Court, holden under this Act, contribution from any other person jointly liable with him; and in all cases of misjoinder of defendants, the Judges may order the suit to proceed against such of the defendants only against whom cause of action appears, and may give judgment against them only; giving also judgment for costs for the defendants improperly joined.

Cases of misjoinder how to be dealt with.

Questions of fact, law, &c. to be determined as in Supreme Court.

XXXVII. The Judges of the Court shall be empowered to determine all questions as well of fact as of law or equity, as administered in the Supreme Court, in all cases which they have authority to try.

Cause to proceed summarily.

XXXVIII. On the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer; and on answer being made in Court, the Judges shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue.

Defendant may set off claim against plaintiff.

XXXIX. A defendant, having any cause of action against the plaintiff, whether or not the same exceeds five hundred rupees, shall be entitled to set the same against the plaintiff's demand, and if judgment is given in such case for the plaintiff, shall be entitled to sue the plaintiff for the balance only of his original demand, after deducting the amount of debt or damages and costs recovered against him under this Act.

Case may be referred to arbitration.

XL. The Judges may, in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as they shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Judges; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause

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and shall be as binding and effectual to all intents, as if given by the Judges; provided, that the Judges may, if they think fit, on application to them at the first Court held after the expiration of one week after the entry of such award, set aside any such award or may, with the consent of both parties, revoke the reference, or order another reference to be made in the manner aforesaid. When award or reference may be revoked.

XLI. The Judges of each Court holden under this Act, subject to the approval of the Judges of the Supreme Court, shall have power to make and issue all the general rules for regulating the practice and proceedings of the Court, and also to frame forms for every proceeding in the Court for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Clerk of the Court, and, from time to time, to alter any such rule or form; and the rules so made and the forms so framed, shall be observed and used in the Court of that Presidency, and shall be sent to the Supreme Court for approval, but shall be of force until disapproved; and in any case, not expressly provided for herein, or by the said rules, the general principles of practice in the Supreme Court may be adopted and applied at the discretion of the Judges, to actions and proceedings in their Court. Rules of practice, forms, &c.

XLII. If upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the Court, the Judges may nonsuit the plaintiff or give judgment for the defendant; and, in either case, where the defendant shall appear and shall not admit the demand, may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as they, in their discretion, shall think fit; and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on When cases may be struck off, nonsuited, &c., and defendant receive compensation. Proviso.

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his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to give judgment, as if the plaintiff had appeared.

When writ of attachment may issue or case be decided ex-parte.

XLIII. If on the day so named in the summons, or at any continuation or adjournment of the Court, or cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called in Court, the Judges, upon due proof of service of the summons, may issue a writ of attachment to compel the appearance of the defendant; or, in their discretion, may proceed to the hearing or trial of the cause on the part of the plaintiff only; and the judgment thereupon shall be as valid as if both parties had attended; provided always, that the Judges in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon; and may grant new trial of the cause, upon such terms, as to payment of costs, giving security for debt or costs, or otherwise, as they think fit, on sufficient cause shown to them for that purpose.

When new trial may be granted.

Time may be granted to parties.

XLIV. The Judges may, in any case, make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may, from time to time, adjourn any Court, or the hearing or further hearing of any cause, in such manner as to them may seem fit.

Defendant may pay into Court a sufficient satisfaction for demand.

XLV. The defendant in any action brought under this Act, for the recovery of money, whether for debt or damages, within such time as shall be directed by the rules for regulating the practice of the Court, may pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, with the costs incurred by the plaintiff up to the time of such payment; and the said sum of money shall be paid to the plaintiff; but, if he shall elect to proceed, and, if the plaintiff shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and

Plaintiff may proceed and liable for costs.

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l be settled by the court, and an order shall thereupon nade by the court for the payment of such costs by the ntiff.

Parties, their wives, &c. may be examined.

XLVI. On the hearing or trial of any action or any r proceeding under this Act, the parties thereto, their s, and all other persons, may be examined on behalf of ef the plaintiff or defendant, subject nevertheless to Acts and Regulations in force with respect to the mination of women of a rank and situation in life ch, according to the customs of the country, would render nproper to compel them to appear in a court of justice.

Evidence to be taken on oath, &c.

XLVII. Every person shall be examined on oath, or, n exempt by law from taking an oath in any court of ice, on solemn affirmation, and every person who, in examination upon oath or solemn affirmation under Act, shall wilfully and corruptly give false evidence, ll be deemed guilty of perjury.

Summons where obtainable and number of names to be entered.

XLVIII. Either of the parties to the suit or any other ceeding under this Act may obtain, at the office of the k of the court, summonses to witnesses, with or without ause requiring the production of books, deeds, papers l writings in their possession or control, and in any such mons any number of names may be inserted.

Fine for refusing to attend to give evidence, &c.

XLIX. Every person on whom any such summons ll have been served, either personally or in such other ner as shall be directed by the general rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in court, who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding one hundred rupees, as the judges shall set on him; and the whole or any part of such fine, in the discretion of the judges, after deducting the costs, may be applied towards indemnifying the party injured by such refusal or neglect.

How to be applied.

Evasion of process how to be dealt with.

L. The judges of any court established under this Act, in all suits where the debt or demand exceeds the sum of

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thirty rupees, upon proof before them that any defendant against whom a summons has been taken out, conceals himself from, or otherwise evades process of the court, or is disposing of his property and effects with intent to defraud the plaintiff, or his creditors generally, or is about to withdraw his person or effects from the jurisdiction of the court, may issue a warrant for the apprehension of such person, and may commit him to gaol until he shall find security for his appearance in the said court from time to time, until judgment shall be pronounced in the suit commenced by such summons, and for payment of the amount and the costs which may be decreed against him therein.

Fine how to be recovered.

LI. Payment of any fine imposed by any court under the authority of this Act may be enforced upon the order of the judges, in like manner as payment of any debt adjudged in the said court, and shall be accounted for as herein provided.

Costs how to be paid, &c., and how recoverable.

LII. All the costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties, in such manner as the judges shall think fit; and, in default of any special direction, shall abide the event of the action; and execution may issue for the recovery of any such costs, in like manner as for any debt adjudged in the said court.

Judgment to be final, nonsuit, &c.

LIII. Every order and judgment of any court holden under this Act, except as herein provided, shall be final and conclusive between the parties; but the judges shall have power to nonsuit the plaintiff, in every case in which satisfactory proof shall not be given to them, entitling either the plaintiff or defendant to the judgment of the court; and shall also in every case whatever have the power, if they shall think fit, to order a new trial to be had, upon such terms as they shall think reasonable, and in the meantime to stay the proceedings.

Suit not to be removed to Supreme Court under certain exceptions.

LIV. No cause commenced in any court holden under this Act, shall be removed from the said court into the Supreme Court by any writ or process, unless the debt or damage or value of the property claimed exceeds one hundred rupees, and then only by leave of a judge of the said

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Supreme Court on proof to his satisfaction that some question of law or equity is likely to arise therein, which, by reason either of its difficulty, novelty or general importance, or of some erroneous course of decision on the same point in the Court of Small Causes, may appear to him fit to be tried in the Supreme Court, and upon such terms as to payment of costs, giving security for debt or costs, or otherwise, as he shall think fit.

Questions of law, &c. may be reserved for opinion of Supreme Court.

LV. The judges of the Court of Small Causes may, in their discretion, reserve any question of law or equity on which they entertain doubts, or which they shall be requested by either party to the suit to reserve, for the opinion of the judges of the Supreme Court, and shall give judgment contingent upon the opinion of the said Supreme Court on a case which they shall thereupon be entitled to state to the said court. If only two judges sit together, and shall differ in opinion, the question on which they differ shall be so referred.

Judges may order how debt shall be paid.

LVI. The judges may make orders concerning the time or times, and by what instalments, any debt or damages or costs, for which judgment shall be obtained in the said court, shall be paid; and all such monies shall be paid into court, unless the judges shall otherwise order.

In case of cross judgments, execution to be taken on balance.

LVII. If there be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum; and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

Execution may proceed against body or goods.

LVIII. Whenever the court shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner directed, by execution against the body or the goods and chattels of the person against whom such order is made, without further notice or order; and the clerk of the said court, at the request of the person prosecuting such order, shall issue

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under the seal of the court a writ of execution to one of the bailiffs of the court, which shall be his warrant to take the body of such person in execution, or to levy, or cause to be levied, by distress and sale of the goods and chattels of such person, such sum of money as shall be so ordered, wheresoever they may be found within the district of the court, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions, shall aid in the execution of every such writ.

In default of instalment execution may issue on the whole amount.

LIX. If the court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue until after default in payment of some instalment according to such order; and execution or successive executions may then issue without further notice or order for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the court shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court.

Where defaulter to be imprisoned and for what period.

LX. Whenever any warrant shall issue for taking in execution the body of any person under this Act, the bailiffs of the court shall be empowered, by virtue thereof, to take and convey him to any prison appointed by the Governor in Council to be the prison of the court, there to remain for such term as shall be directed by the warrant, not longer than six calendar months, or until he shall sooner perform the order of the court.

Persons not to be imprisoned twice on same judgment, nor is execution to proceed on body and goods at the same time.

LXI. No person shall be imprisoned twice under the same judgment, nor shall execution against the body and goods issue at the same time under the same judgment.

Deposit of diet money, rate, &c.

LXII. Every person suing out a warrant of execution against the body of any other person under this Act, shall deposit with the clerk of the court, at the time of the issue of the warrant, diet money for one week, after the rate of one anna and half for each day, which shall be paid by the clerk to the keeper of the prison at the time of the execution of the warrant.*

* Government are empowered to regulate rate of diet money, and Court may vary rate in case of illness or other special cause.—*Act XX. of 1857.*

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Further deposits to be made monthly.

LXIII. Notice of the execution of every such warrant shall be forthwith given to the person at whose suit it issued, who shall thereupon deposit with the keeper of the prison diet money for the remainder of the month in which the warrant is executed, after the same daily rate, and shall continue thereafter to deposit monthly with the said keeper, in advance, diet money at the same daily rate, for each month which the debtor is liable to be kept in prison at his suit.

In default prisoner to be discharged.

LXIV. All diet money shall be employed for the subsistence of the prisoner; and if, by default of the detaining creditor, such diet money is not paid, the prisoner shall be entitled to his discharge by order of the court.

Diet money to be counted as costs.

LXV. All diet money, which shall be spent in providing subsistence for any prisoner, shall be costs in the same cause, and all diet money which shall not be so spent, shall be repaid to the creditor advancing the same.

Prisoner may be discharged on giving security.

LXVI. Whenever any prisoner shall offer good and reasonable security for payment of any debt or damage and costs, either in full or by instalments as the court shall think reasonable, the court may order him to be discharged on giving such security.

Or on payment of dues.

LXVII. Upon payment of the debt or damage and costs in full, the prisoner shall be entitled to be forthwith discharged.

Imprisonment not to extinguish liability, but property to become liable.

LXVIII. If the debt or damage and costs are not paid, the imprisonment shall not extinguish the liability to pay the same; but all property then belonging to or afterwards acquired by the prisoner shall be liable to be taken in execution after his discharge from prison for satisfaction thereof, or of so much thereof as is not paid, including the diet money actually expended for subsistence of the prisoner.

What bailiff may seize.

LXIX. Every bailiff executing any process of execution issuing out of the said court against the goods of any person, may, by virtue thereof, seize and take any of the goods of such person, (excepting the necessary wearing apparel and bedding of such person or his family, and the tools and implements of his trade,) and may also seize and take any money or banknotes, and any cheques, bills of ex-

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change, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any execution shall have issued as aforesaid.

Bailiff to deliver property to clerk.

LXX. The bailiff shall forthwith deliver any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, which shall have been so seized or taken as aforesaid, to the clerk or other person appointed by the judges to receive the same, who shall hold them as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured, or made payable thereby, when the time of payment thereof shall have arrived.

Plaintiff may sue in name of defendant.

Judgment may be temporarily suspended.

LXXI. If it shall, at any time, appear to the satisfaction of the court that any defendant is unable from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, the judges, in their discretion, may suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as they shall think fit, and so, from time to time, until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Sale of goods, &c. when to take place.

LXXII. No sale of any goods, which shall be taken in execution as aforesaid, shall be made until after the end of five days at least next following the day on which such goods have been so taken, unless such goods be of a perishable nature, or upon the request, in writing, of the party whose goods have been taken.

Goods to be placed in safe custody.

LXXIII. Until such sale the goods shall be deposited by the bailiff by whom they were taken in some fit place, or they may remain in the custody of a fit person approved by the judges to be put in possession by the bailiff.

Bailiffs, &c. may be appointed brokers.

LXXIV. The judges, from time to time, as they shall think proper, may appoint such and so many persons for

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keeping possession, and so many of their bailiffs or other fit persons, to be sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels or effects taken in execution under this Act, as shall appear to them to be necessary, and may direct security to be taken from each of them, for such sum and in such manner as they shall think fit, for the faithful performance of their duties, without injury or oppression; and the judges may dismiss any person, broker or appraiser so appointed.

Brokers alone to sell the goods.

LXXV. No goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution; except by one of the brokers or appraisers so appointed.

Commission to be taken for sale of goods and how to be applied.

LXXVI. The costs to be demanded or taken for such appraisement and sale shall be one anna in the rupee on the produce of the goods sold; and the judges may apply the sum so raised as costs towards payment of the contingent charges and remuneration of the said brokers and appraisers, in such manner as shall be approved by the Governor in Council.

Clerk to keep account of sales.

LXXVII. The clerk of the court shall keep an account of all sums received upon such sales, distinguishing the amount paid to the party entitled to the benefit of the execution, and the amount levied and retained as costs, and also of all sums allowed to the brokers and appraisers upon such sales.

Execution of judgment beyond jurisdiction.

LXXVIII. Whenever any defendant against whom judgment shall have been given in the Court of Small Causes, shall go before execution thereof out of the jurisdiction of the court, the judge of any zillah town where he shall be found, upon receiving from the plaintiff, either in person or by vakeel, an application in writing setting forth these facts, with a duly authenticated copy of the judgment of the court, shall execute the said judgment in the manner prescribed by law for execution of his own decrees; unless the defendant shall allege any reasonable cause why the judgment should not be executed, and shall give security to such amount as the judge of such zillah or town shall deem reasonable, that he will, within such time as shall be

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allowed him for that purpose, either satisfy the judgment, or produce a duly authenticated copy of an order of the judges of the Court of Small Causes, discharging their former judgment.

Judgment not to be stayed by writ of error &c., except in certain cases.

LXXIX. No judgment or execution shall be stayed, delayed or reversed upon or by any writ of error or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act, unless the amount recovered exceeds one hundred rupees and then only after the person suing out such writ shall become bound with two sufficient sureties to be approved by the clerk of the court, in treble the sum adjudged to be recovered in the former judgment, to prosecute the said writ with effect, and also to satisfy and pay (if the writ be not prosecuted, or if the judgment be affirmed,) the debt or damages and costs adjudged, and all costs and damages to be awarded for the delay of execution.

Warrant what to specify.

LXXX. Upon every warrant of execution issued against the goods and chattels of any person, the clerk of the court shall cause to be stated the sum of money and costs adjudged with the sum paid for such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

When sale may be stayed.

Record of summons, &c. to be kept and to be evidence.

LXXXI. The clerk of every court holden under this Act shall cause a record of all summonses, and of all orders, and of all judgments and execution, and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered, from time to time, in a book or books belonging to the court, which shall be kept at the office of the court; and shall be duly authenticated by one or more of the judges; and such entries in the said book or books

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or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall be admitted in all courts and places as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

Clerk to prepare periodically lists of unclaimed monies, and after publication to credit to fee account.

LXXXII. The clerk of every such court shall, in the month of *March* in each year, make out a correct list of all sums of money, belonging to suitors in the court, which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of the month of *January* then last past, specifying the names of the parties for whom or on whose account, the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court house, and at all times in the clerk's office; and all sums of money which shall have been paid into any such court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any commissioner or officer of such court, or otherwise held in trust for such suitors, and all further sums of money, which shall hereafter be paid into such court for the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into court, be applicable as part of the fees receivable on account of the court, and shall be carried to the same account; and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant, or married woman, or of unsound mind, or out of the territories under the Government of the East India Company, shall be taken into account in estimating the said period of six years.

Punishment for misbehaviour in court.

LXXXIII. If any person shall wilfully insult any judge, clerk or officer of the said court, for the time being, during his sitting or attendance in court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the

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court, with or without the assistance of any other person, by the order of the judges, to take such offender into custody, and detain him until the rising of the court; and the judges shall be empowered, if they shall think fit, by a warrant under their hands, and sealed with the seal of the court, to commit any such offender to any prison to which they have power to commit offenders under this Act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding fifty rupees for every such offence, and in default of payment thereof, to commit the offender to any such prison as aforesaid, for any time not exceeding seven days, unless the said fine be sooner paid, or instead of inflicting summary punishment under this Act may cause the offender to be indicted in the Supreme Court, if the offence be an indictable misdemeanour.

For assault, &c. on officers of court while in execution of duty.

LXXXIV. If any officer or bailiff of any court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any person arrested, or goods levied under process of the court, the person so offending shall be liable to a fine, not exceeding one hundred rupees, to be recovered by order of the court, or before a magistrate, as hereinafter provided; and the bailiff of the court, or any peace officer in any such case, may take the offender into custody (with or without warrant,) and bring him before such court or magistrate accordingly.

Neglect of bailiff to execute warrant renders him liable to damages.

LXXXV. If any bailiff of the said court, who shall be employed to execute any warrant of the court, shall, by neglect, or connivance, or omission, lose an opportunity of executing such warrant, then, upon complaint of the party aggrieved by reason of such neglect, connivance or omission, (and the fact alleged being proved to the satisfaction of the court) the judges shall order the bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution is issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided

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for enforcing a judgment recovered in the said court, without prejudice nevertheless to the execution of the original warrant.

Offences committed under colour or pretence of office, how punishable.

LXXXVI. If any clerk, bailiff or officer of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, the judges may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as they shall think just; and also, if they shall think fit, may impose such fine upon the clerk, bailiff or officer, not exceeding one hundred rupees for each offence, as they shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Punishment for corruptly accepting fee or reward.

LXXXVII. Every clerk, bailiff or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take or accept any fee or reward whatsoever, other than his lawful salary, for any thing done or to be done by virtue of this Act, or on any account whatsoever, relative to putting this Act into execution, shall, upon proof thereof before the said court, and in the case of a clerk, on confirmation of the finding of the court by the Governor in Council, be for ever incapable of serving, or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

How action for erroneous seizure may b settled.

LXXXVIII. If any claim shall be made to, or in respect of any goods or chattels taken in execution under the process of any court holden under this Act, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the clerk of the court, upon

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application of the officer charged with the execution of such process, as well before as after any action brought against such officer, may issue a summons calling before the said court, as well the party issuing such process as the party making such claim, and thereupon any action, which shall have been brought in the Supreme Court in respect of such claim, shall be stayed, and any judge of the Supreme Court, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Court of Small Causes, and the judges of the Court of Small Causes shall adjudicate upon such claim and make such order between the parties in respect thereof, and of the costs of the proceeding as to them shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court.

Act VII of 1847 made applicable to recovery of arrears of rent.

LXXXIX. The powers of Act VII. of 1847 to regulate distresses for small rents in Calcutta, shall be extended to the recovery of all arrears of rent not exceeding five hundred rupees, and the judges of every Court of Small Causes under this Act shall be empowered to exercise within their several jurisdictions the extended powers of the said Act; and the said Act shall be construed as if, instead of Calcutta and the Settlement of Fort William in Bengal, the limits of the jurisdiction of the court had been therein mentioned, and the judges of the Court of Small Causes under this Act instead of the commissioners of the court therein mentioned, and the amount of five hundred rupees instead of one hundred rupees, and the forms contained in the schedule annexed to the said Act shall be altered accordingly and shall refer to this Act instead of Act VII. of 1847.

Who may make affidavit.

XC. The affidavit of arrear required by the said Act No. VII. of 1847, may, in every case, be made either by the person entitled to such arrear or by his or her lawfully constituted attorney, and a warrant of distress may issue on such affidavit.

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Tenant or occupier may be summoned to show title of occupancy.

XCI. Where any person shall hold or occupy any house, land or tenement, of which the value or the rent payable in respect thereof, does not exceed the rate of five hundred rupees by the year, without leave of the owner, or under a lease or agreement which is ended, or duly determined by legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit, and deliver up possession of the premises, or of such part thereof respectively, the owner or his agent may take out a summons from the court directed to such tenant or occupier, to show by what title he claims to hold or occupy the premises or part thereof.

In default, owner &c. may give proof of termination of tenancy, &c.

XCII. If the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof, of which he is then in possession, to the said owner or his agent, such owner or agent may give to the court proof of the holding, and of the end or other determination of the tenancy, if any had existed, with the time or manner thereof, and of the right by which he claims the possession.

When warrant for possession may issue.

XCIII. Upon proof of due service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, the judges may issue a warrant under the seal of the court, to any bailiff of the court, requiring and authorising him within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such owner or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises with such assistants as he shall deem necessary, and to give possession accordingly: Provided always, that entry upon any such warrant shall not be made on a *Sunday*, *Good-Friday* or *Christmas-day*, or any other day observed by the court as a holiday, or at any time except between the hours of six in the morning and six in the afternoon: Provided also, that nothing herein contained shall be deemed to protect

Person suing not protected from action by occupier.

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any person by whom any such warrant shall be sued out of the Court of Small Causes from any action which may be brought against him by any such tenant or occupier for such entry and taking possession, where such person had not at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

With leave of court summons may be served in special manner.

XCIV. Such summons as last aforesaid may be served either personally, or by leave of the court, upon proof that the tenant or occupier is not to be found within the jurisdiction of the court, by leaving the same with some person, being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; or if the place of abode of such person or persons shall either not be known or admission thereto cannot be obtained for serving such summons, by posting the said summons on some conspicuous part of the premises so held over.

Judges, &c. issuing or executing warrant exempt from prosecution.

XCV. No action or prosecution shall be maintainable against the judges or against the clerk of the court, by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed, or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

Irregularity in obtaining possession not deemed trespass if owner had lawful right to possession.

XCVI. Where the owner, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said owner nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby, shall be specially laid, and may recover full satisfaction for such special damage with costs of suit: Provided that, if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that, if proved,

Special damages may be sued for.

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but assessed at any sum not exceeding ten rupees, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been holden, shall certify that in his opinion full costs ought to be allowed.

When suing of warrant deemed trespass and when it may be stayed.

XCVII. In every case in which the person by whom any such warrant shall be sued out of the Court of Small Causes, had not, at the time of suing out the same, lawful right to the possession of the premises, the suing out of any such warrant, as last aforesaid, shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound with two sufficient sureties, to be approved by the clerk of the court in such sum as to the judges shall seem reasonable, regard being had to the value of the premises and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action, in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and, if upon the trial of such action of trespass, judgment be given for the plaintiff, such judgment shall supersede the said warrant.

Recovery of possession not to bar regular suit.

XCVIII. Recovery of the possession of any such house, land or tenement shall be no bar to the institution of a regular suit for trying the title thereunto, which may be brought in the Supreme Court, as if this Act had not been passed.

Bond to whom to be given and how enforced.

XCIX. Every bond given on the removal of any action out of the Court of Small Causes, or upon staying, delaying or reversing any judgment of execution awarded therein, or the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment or nonsuit, shall be made to the other party to the action, and shall be approved by the judges and attested under the seal of the court; and if the bond so taken be forfeited, or if upon the proceeding for securing which such

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bond was given, the judge, before whom such proceeding shall be had, shall not certify upon the record in court, that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt and recover thereon: Provided always, that the court in which such action as last aforesaid shall be brought may, by a rule of court, give such relief to the parties liable upon such bond as may appear to him reasonable, and such rule shall have the nature and effect of a defeasance to such bond.

Except in certain cases, officers may be sued in Supreme Court.

C. All actions and proceedings, which before the passing of this Act, might have been brought in the Supreme Court where any officer of the Court of Small Causes shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof, may be brought and determined in the Supreme Court, at the election of the party suing or proceeding, as if this Act had not been passed.

When plaintiff and defendant entitled to costs, &c.

CI. If any action shall be commenced after the passing of this Act in the Supreme Court, for any cause other than those lastly herein-before specified, for which a summons might have been taken out from a court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than five hundred rupees, if the said action is founded on contract, or less than one hundred rupees if it is founded on wrong, the plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge, who shall try the cause, shall certify on the back of the record that, by reason of the difficulty, novelty or general importance of the case, or of some erroneous course of decision on like cases in the Court of Small Causes, the action was fit to be brought in the Supreme Court.

Except under certain circumstances plaintiff not to have costs in action against officers of the court.

CII. If any person shall bring any suit in the Supreme Court in respect of any grievance committed by the clerk, bailiff, or officer of any court holden under this Act, under colour or pretence of the process of the said court, and upon the trial of action, no greater damages shall be found for

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the plaintiff than the sum of five hundred rupees, no costs shall be awarded to the plaintiff in such action, unless the judge shall certify in court, upon the back of the record, that the action was fit to be brought in the Supreme Court.

Penalties, fines, &c. how to be enforced.

CIII. All penalties, fines and forfeitures by this Act, inflicted or authorized to be imposed, (the manner of recovering and applying whereof is not hereby otherwise particularly directed,) upon proof before any justice of the peace or magistrate having jurisdiction where the offender shall reside or be, or the offences shall be committed, either by the confession of the party offending, or by the oath or affirmation of any credible witness, shall be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice or magistrate, and the overplus (if any) after such penalties, fines and forfeitures, and the charges of such distress and sale are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

If penalties, &c. be not paid offender may be detained until return of warrant.

CIV. If any such penalties, fines and forfeitures respectively, shall not be paid forthwith upon conviction, it shall be lawful for such justice or magistrate to order the offender so convicted to be detained in safe custody until return can conveniently be made to such warrant of distress; unless such offender shall give sufficient security to the satisfaction of such justice or magistrate for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security the justice or magistrate shall be empowered to take by way of recognizance or otherwise, as to him shall seem fit.

In case of insufficiency of distress offenders may be committed to jail.

CV. If upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of the justice or magistrate, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such justice or magistrate sufficient goods and chattels, whereon to levy all such penalties, forfeitures, costs and charges, the justice or

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magistrate may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction, for any time not exceeding three calendar months, unless such penalties, forfeitures and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

Penalties, &c. to be paid to Clerk if not otherwise provided for.

CVI. The monies arising from any such penalties, forfeitures and fines as aforesaid, when paid and levied, shall (if not by this Act directed to be otherwise applied,) be, from time to time, paid to the clerk of the court, and shall be applied in like manner as the fees thereof.

How Magistrate to proceed for recovery of fines.

CVII. In all cases in which by this Act any penalty or forfeiture is made recoverable before a justice or magistrate, he may summon before him the party complained against, and on such summons may hear and determine the matter of such complaint; and, on proof of the offence, may convict the offender and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes, as if an information in writing had been exhibited.

Form of conviction.

CVIII. In all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words or to the effect following: (that is to say,) "Be it remembered that on this "day of in the year A. B. convicted "before a Magistrate for the "• (or before a Judge appointed under Act IX. 1850) "of having *(state the offence)*; and I *(or we)* the said do "adjudge the said to forfeit and pay for the same the "sum of [or to be committed to for the space "of]. Given under hand ( ) and "seal ( ) the day and year aforesaid."

Verdict, &c. not to be quashed for want of form.

CIX. No order, verdict, or judgment or other proceeding made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

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Distress, &c. not unlawful for want of form, but special damages may be recovered.

CX. Where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning, on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

Actions against persons for anything done in pursuance of this Act shall be commenced within three months, notice thereof being given to defendant, &c. &c.

CXI. All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months after the act committed, and not afterwards, and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action is brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs by or on behalf of the defendant.

Schedule of Fees.

Sums not above.	Every Summons or Subpœna.		Warrant.	
Rupees.	Rupees.	Annas.	Rupees.	Annas.
10	0	2	0	2
20	0	4	0	4
50	0	8	0	8
100	1	0	1	0
200	1	4	2	0
300	1	8	3	0
400	1	12	4	0
500	2	0	5	0

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A. D. 1850. ACT XVIII.

AN ACT *for the Protection of Judicial Officers.*

Passed on the 4th April 1850.

FOR the greater protection of Magistrates and others acting judicially; it is enacted as follows:

Judge, &c. not liable for judicial acts provided they are done in good faith.

I. No judge, magistrate, justice of the peace, collector, or other person acting judicially, shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of: and no officer of any court, or other person bound to execute the lawful warrants or orders of any such judge, magistrate, justice of the peace, collector or other person acting judicially, shall be liable to be sued in any civil court for the execution of any warrant or order, which he would be bound to execute if within the jurisdiction of the person issuing the same.

A. D. 1850. ACT XIX.

Concerning the binding of Apprentices.

Passed on the 11th April 1850.

Preamble.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood; it is enacted as follows:

When and for what period a child may be apprenticed.

I. Any child, above the age of ten and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or in the case of a female, beyond the time of her marriage.

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II. The age set forth in the contract shall be evidence of the child, in all questions which arise as to the right of the master to the continuance of the service. Contract to be conclusive of age.

III. Any magistrate or justice of the peace may act with all the powers of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other magistrate, of vagrancy, or the commission of any petty offence. Magistrates, &c. may act as guardians.

IV. An orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors or managers thereof, as his or her guardians for this purpose. Directors of charitable institutions may act as guardians.

V. Any such boy may be bound as an apprentice in the sea service to any of Her Majesty's subjects being the owner of any registered ship belonging to and trading from any port in the territories under the Government of the East India Company, which has been declared to be a registering port under Act X. 1841, to be employed in any such ship, the property of such person, commanded by a British subject, and, while so employed, to be taught the craft and duty of a seaman. Boys may be bound for sea service to owner of a trading ship.

VI. Repealed by Act XIV. of 1870.

VII. The master or commander of any ship in which an apprentice bound to the sea service shall be appointed to serve by the party to whom he is bound, shall be deemed the agent of such party for the purpose of this Act. Master of ship deemed owner.

VIII. Every contract of apprenticeship shall be in writing, according to the form given in the schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught. Form of contract.

IX. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, By whom contract to be signed.

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when the apprentice is bound by the governors, directors or managers of a public charity, the signature of two of them, or of their secretary or officer, shall be sufficient on behalf of the persons binding the apprentice.

Contract where to be deposited and who to have copies.

X. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the chief magistrate of the place or district where it has been executed, or if the apprentice is bound to the sea service, in the office of the person appointed under Act X. 1841, to make registry of ships at the port where the apprentice is to begin his service; and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the magistrate or registering officer.

Certified copies to be evidence.

How term of service may be changed or contract determined.

XI. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice, if he is above the age of fourteen years; provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to Section VIII. of this Act; and the magistrate or registering officer shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Apprentice may be assigned over to another party.

XII. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof; provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other

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parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office copies of the contract under the hand of the magistrate or registering officer according to the form given in schedule (B) annexed to this Act.

Form of certificate of assignment.

XIII. Upon complaint made to any magistrate in the said territories by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint; and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees; and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

How apprentice may proceed to have a contract cancelled.

Magistrate may assess reasonable sum on behalf of apprentice.

XIV. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished, had it been against his child;

Contract not liable to be cancelled or master &c. to criminal proceeding for moderate chastisement. Cancelment of contract does not bar criminal action.

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whether or not any proceedings be taken for cancelling the contract of apprenticeship.

How apprentice to be proceeded against and punished for ill behaviour or absconding.

XV. Upon complaint made to any magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped; or, if the offender be a girl, or in the case of any boy, the magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

When contract may be cancelled on demand of master.

XVI. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved: and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the magistrate for behoof of the apprentice.

How money recovered on behalf of apprentice may be applied.

XVII. The magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or other-

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wise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Time within which complaints are to be made.

XVIII. No magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose; or, if the cause of complaint arose on board ship during a voyage, within one month after the arrival thereof at a port or place in the said territories: and no magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act, unless it be brought within three months after the cause of complaint arose; or if the cause of complaint arose on board ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

Contract to determine on death of master and portion of premium to be returned unless executors, &c. continue business, &c.

XIX. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term, of any premium which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Continuance of apprenticeship by executors to be certified on contract.

XX. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors and administrators on the original contract of apprenticeship; and also on the office copies thereof, by the magistrate or registering officer; and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Apprentice entitled to three months' maintenance after death of master.

XXI. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of

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his master, out of the assets left by him; provided that during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they shall appoint.

Insolvency of master to determine contract and premium may be claimed as debt.

XXII. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or the person by whom he was bound shall be entitled to claim the amount thereof, as a debt against the estate of the bankrupt or insolvent.

British subjects, &c. amenable to jurisdiction of East India Company's courts &c.

XXIII. For the purposes of this Act, all British subjects wherever or of whatever parents born, as well as other persons in the territories under the government of the East India Company, without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the courts and magistrates of the East India Company.

Appeal to lie to Sessions Court.

XXIV. An appeal shall lie from any order passed by any magistrate without the said towns and island to the Court of Session to which such magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Interpretation.

XXV. In this Act the words "master," "owner," "person," and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

SCHEDULE A.

Form of Agreement.

This Agreement made the day of in the year between A. B., of and C. D., of Witnesseth that the said A. B. doth this day bind E. F., a boy (or girl) of the age of years completed, son (or daughter) of the said A. B. (or otherwise, describing the relation in which

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A. B. and E. F. stand) to dwell with and serve the said C. D. as an apprentice, from this day forth for years, (in the case of a girl add, or until the time of her marriage, which shall first happen,) during all which term the said apprentice shall duly and faithfully serve the said C. D., according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things toward the said C. D. and his (or her) family. And the said C. D. for himself (or herself) and his (or her) executors and administrators in consideration [of the premium or sum of paid by the said A. B. to the said C. D., the receipt whereof the said C. D. hereby acknowledges, and] of the faithful service of the said E. F., doth covenant and agree with the said A. B., his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said E. F., in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing, and all other things necessary fit and reasonable for an apprentice: (and further, *here insert any special covenants.*)

If there is no premium the words between brackets may be omitted.

In witness whereof the parties have hereunto set their hands and seals, the day and year above written.

A. B. L. S.

C. D. L. S.

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before G.H., Magistrate of C. D., of with E. F., his (or her) apprentice, and J. K., of and desired that the Agreement of Ap-

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prenticeship, whereby the said E. F. was bound to the said C. D., might be assigned and made over to the said J. K.; and the said G. H., having satisfied himself by personal examination of the said E. F., and by other lawful ways and means, that such assignment is for the benefit of the said E. F., and is made with the consent of [the said E. F., and of] all persons whose consent thereunto by law is required, doth allow such assignment: and the contract of apprenticeship whereby the said E. F. was on the day of in the year bound to the said C. D., as an apprentice to learn the trade (craft or employment) of a shall henceforth endure, unto the end of the said term, as if the said J. K. had been originally party to the said deed, and had executed the same in the place and stead of the said C. D., and shall be bound, for himself (or herself) his (or her) executors or administrators, to fulfil the covenants by the said C. D., to be performed, and the said E. F. shall henceforth be bound unto the said J. K., in like manner as he (or she) was by the said Agreement bound unto the said C. D.

If E. F. is not above the age of fourteen years, the words between brackets may be omitted.

C. D. E. F J. K.

In witness whereof the said C. D., E. F. and J. K. have hereunto set their hands before me the day and year above written.

G. H., *Magistrate.*

A. D. 1850. ACT XXI.

AN ACT *for extending the principle of Section IX, Regulation VII.* 1832, *of the Bengal Code, throughout the Territories subject to the Government of the East India Company.*

Passed on the 11*th April* 1850.

Preamble.

WHEREAS it is enacted by Section IX, Regulation VII. 1832, of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahommedan persuasion, or where one or more of the parties to the suit shall not be either of the Mahommedan or Hindoo persuasions, the laws of those religions shall not be permitted

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to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled;" and whereas it will be beneficial to extend the principle of that enactment throughout the territories subject to the Government of the East India Company; it is enacted as follows:—

So much of any law or usage as inflicts forfeiture of rights or property, &c. by reason of renunciation of religion, &c. shall cease to be enforced.

I. So much of any law or usage now in force, within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the courts established by royal charter within the said territories.

As Acts of the Legislature have no retrospective effect unless clear provision towards that end be made in them, this Act cannot avail a person who changed his religion before its enactment.—*In re Naugummah vers. Kareebassapah alias Kareemkhan*, Dec. S. U. 1858 in A. S. S Nos. 93 & 94 of 1857, p. 250.

A. D. 1852. ACT VIII.

AN ACT *for remunerating the Sheriffs of Calcutta, Madras and Bombay, for the execution of Mofussil Process under Act XXIII. of* 1840.

Passed on the 6th February 1852.

FOR making better provision for the Sheriffs of Calcutta Madras and Bombay, in remuneration for the execution of legal process issued by courts out of the said towns respectively; it is enacted as follows:—

Sudder Court to prepare table of Sheriff's fees for execution of Mofussil processes;

I. The several sudder courts of the Presidency of Fort William in Bengal, and the sudder courts of the Madras and Bombay Presidencies respectively, shall make, and from time to time amend, a table of reasonable fees, to be taken on account of the execution by the sheriff in such presidency of any legal process issued by any court, judge or magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras and Bombay, and of the sums to be allowed for costs of advertisements, or other notifications of sales of property, according to the amount of the decrees to be satisfied by

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such sales, which fees and sums shall be payable by the party applying for the process before it is sent to the sheriff for execution, and shall be deemed costs in the cause.

subject to approval of Government.

II. The said table of fees and sums, when made or amended as aforesaid, shall be submitted by the sudder court of the Lower Provinces of the Presidency of Fort William to the Governor of Bengal, and by the sudder court of the North Western Provinces of the said presidency to the Lieutenant Governor of those provinces, and by the sudder courts of Madras and Bombay respectively to the Governor in Council of the presidencies in which such courts respectively have jurisdiction, for his approval, and the said table of fees and sums shall have full force and effect, and the fees and sums therein mentioned may be lawfully demanded and taken from and after the approval thereof by the said Governor, Lieutenant Governor or Governor in Council, as the case may be.

Account of fees to be kept;

III. Every such court, judge and magistrate issuing process as aforesaid, shall cause a separate account to be kept of the amount of all fees and sums so paid, and shall, from time to time, as directed by Government, cause the amount thereof to be paid into the local treasury.

and account paid to Sheriff twice a year.

IV. The Government of each of the presidencies and provinces aforesaid shall twice in each year account for and pay over to the sheriff for the time being, the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the net proceeds thereof to Calcutta, Madras or Bombay, as the case may be; or, where the amount has accrued in the shrievalty of more than one sheriff, shall apportion the sum paid accordingly between the sheriff for the time being, and the then late sheriff.

Fees may be commuted to monthly payment.

V. The said Governments respectively may compound with the sheriff for a monthly payment to be made to him instead of such fees and sums, and during such composition may appropriate the said fees and sums to the purposes of Government.

Fee for seizure and sale of property.

VI. Over and above such fees and sums, or any such monthly payment received instead of such fees and sums,

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A. D. 1852. ACT XV.*

AN ACT *to amend the Law of Evidence.*

Passed on the 12th of March 1852.

WHEREAS it is expedient to amend the Law of Evidence in divers particulars; it is hereby enacted as follows:

I. and II. Repealed by Act VIII. of 1868.

III. Repealed by by Act I of 1872.

IV. Repealed by Act VIII of 1868.

V. to X. Repealed by Act I of 1872.

XI. Repealed by Act VIII of 1868.

XII. All her Majesty's Courts within the British territories under the Government of the East India Company, and every judge and justice of such courts, and every officer, commissioner, arbitrator or other person, now or hereafter having, by law or by consent of parties, authority to hear, receive, and examine evidence with respect to or concerning any suit, action, or other proceeding in any of such courts, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively. Court, &c. may administer oath.

* Section XII of this Act though Repealed by Act I of 1872 but has been reversed by Act XVIII of 1872.

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the sheriff shall be entitled to a fee after the rate of two rupees eight annas for each hundred rupees of the value of any goods or property taken and sold by him in execution of any process issued by any court, judge or magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisement.

Fee for taking body of person in execution.

VII. No fee, estimated upon the amount of the sum for which any person is taken in execution, shall be payable to the sheriffs of Calcutta, Madras or Bombay, or any of their bailiffs, for taking the body of any person in execution on any process issued by any court, judge or magistrate out of the local jurisdiction of the said Supreme Courts respectively; but instead thereof, such fees shall be payable to the sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the sudder courts as aforesaid.

Sheriff liable to damages for escape of prisoner.

VIII. If any person taken in execution on any such process shall escape out of the legal custody of the sheriff, the sheriff shall not be liable to an action or debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken.

A. D. 1852. ACT XVII.

AN ACT *to diminish the expense and delay of Proceedings in Her Majesty's Courts within the Territories of the East India Company.*

Passed on the 12*th March* 1852.

Persons interested in questions cognizable in Her Majesty's Courts may state special cases for the opinion of such courts.

I. It shall be lawful for persons interested or claiming to be interested in any question cognizable in Her Majesty's courts within the territories of the East India Company, on the equity, plea, ecclesiastical or admiralty sides thereof respectively, and including among such persons all lunatics, married women, and infants in the manner and under the restrictions hereinafter contained, to concur in stating such questions in the form of a special case for the opinion of the said courts, and it shall also be lawful for all executors, administrators, representatives and trustees to concur in such case.

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How lunatic may concur.

II. The committee of the estate of any lunatic interested or claiming to be interested in any such question as aforesaid may, after having been authorized in that behalf by the court or any judge thereof in which such special case is filed, concur in such case in his own name, and in the name and on the behalf of the lunatic.

How married women may concur.

III. A husband interested or claiming to be interested in right of his wife in any such question as aforesaid, may concur in such case in his own name, and in the name of his wife where the wife has no claim to any interest distinct from her husband; and a married woman having or claiming any interest in any such question as aforesaid distinct from her husband, may in her own right concur in such case, provided that her husband also concurs therein; but nothing herein contained shall be construed so as to require the husband of a Mahomedan or Hindoo female to concur in such case.

How infant may concur.

IV. The guardian of any infant interested or claiming to be interested in any such question as aforesaid may concur in such case in the name and on the behalf of the infant, unless such guardian has an interest in such question adverse to the interest of the infant therein.

How special guardian to be appointed for a lunatic not found such by inquisition and for infant.

V. It shall be lawful for the said courts, by order to be made in the matter of any lunatic not found such by inquisition, or in the matter of any infant, upon the application of any person on the behalf of such lunatic, or upon the application of such infant, by motion or petition, to appoint any person shown by affidavit to be a fit person, and to have no interest adverse to the interest of the lunatic or infant, to be the special guardian of such lunatic or infant, for the purpose of concurring in such case in the name and on behalf of the lunatic or infant, and any such person so appointed may lawfully so concur. Provided always, that it shall be lawful for the said courts to require notice of such application to be given to such person, if any, as the court shall think fit.

Order to appoint special guardian of an infant may be discharged by Courts if made without notice.

VI. In any case in which any such order as aforesaid shall have been made by the said courts in the matter of any infant without notice to the guardian of the infant, it shall be lawful for the said courts, if they shall respectively think

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fit so to do, to discharge such order upon the application of such guardian, by motion or petition: and the said courts, if they shall respectively think fit, may thereupon appoint some other fit person to be the special guardian of such infant for the purpose of such special case, and may also give such directions as may be necessary for substituting in such special case either the name of the guardian so applying, or of the special guardian so appointed, in lieu of the name of the special guardian so displaced. Provided always, that the discharge of any order appointing a special guardian shall not invalidate any thing which shall, in the meantime, have been done by such special guardian, unless the court shall, upon notice to all parties, specially so direct.

How special cases to be entitled.

VII. Every such special case shall be entitled as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; and in the title to such cases, lunatics and infants shall be described as such, and their committees, guardians, or special guardians named; and where in any such case a married woman is named as a plaintiff, and her husband as a defendant thereto, a next friend of such married woman shall be named in the title to such case; but nothing herein contained shall be construed so as to require a next friend of any Hindoo or Mahomedan married woman to be named in such title.

Form of special case.

VIII. Every such special case shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby; and upon the hearing of such case, the court and the parties shall be at liberty to refer to the whole contents of such documents; and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference which the court might have drawn therefrom if proved in a cause.

Special case to state how guardian constituted, and the concurrence of married women.

IX. Every such special case to which an infant or lunatic is a party by his guardian or special guardian shall also state how such guardian or special guardian was consti-

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tuted; and where any married woman having or claiming any interest distinct from her husband is a party to such case, it shall be stated therein that she concurs in such case in her own right.

Special case to be signed by counsel and filed, and appearances to be entered for defendants.

X. Every such special case shall be signed by counsel for all parties, and shall be filed in the same manner as bills, plaints, or allegations are filed, and the defendants may appear thereto in the same manner as defendants appear to bills, plaints, or allegations, and no defendants shall be required to take an office copy of a special case, but an office copy thereof shall be taken by the plaintiff.

Parties to be bound by statements after defendants have appeared to special case.

XI. After a special case shall have been filed, and the defendants shall have appeared thereto, all the parties to such special case shall be subject to the jurisdiction of the court in the same manner as if the plaintiff in the special case had filed a bill, plaint, or allegation against the parties named as defendants thereto, and such defendants had appeared to such bill, plaint, or allegation; and upon the special case being filed and appearances entered thereto as aforesaid, all parties to such special case shall, for the purposes of such special case, be bound by the statements therein.

How cases to be set down for hearing.

XII. So soon as all the defendants shall have appeared to the special case, the same may be set down for hearing and subpœnas to hear judgment or notices of hearing, issued and served according to the practice of the said courts.

Upon hearing, Court to determine question and make declaration.

XIII. It shall be lawful for the said courts upon the hearing of any such special case as aforesaid, to determine questions raised therein or any of them, and by decree or judgment to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration, and every such declaration of the said court contained in any such decree or judgment shall have the same force and effect as such declaration would have had, and shall be binding to the same extent as such declaration would have been, if contained in a decree or judgment made in a suit between the same parties instituted by bill, plaint, or allegation; provided always, that if upon the hearing of such special case as foresaid, the court shall be of opinion

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that the statements contained therein so far as the same affect the interest of any married woman, infant or lunatic are not true, or that the questions raised thereby or any of them cannot properly be decided upon such case, the same may be at such hearing, with the consent of all parties thereto, and of the court, amended so as properly to raise such questions, or the said court may refuse to decide the same.

Proviso that Court may refuse to decide.

XIV. Every executor, administrator, representative, trustee, or other person making any payment or doing any act in conformity with the declaration contained in any decree or judgment made or pronounced upon a special case, shall in all respects be as fully and effectually protected and indemnified by such declaration, as if such payment had been made or act done under or in pursuance of the express order of the said court made in a suit, action, or proceeding between the same parties instituted by bill, plaint, or allegation, save only as to any rights or claims of any person in respect of matters not determined by such declaration.

Protection to be afforded to trustees by declaration.

XV. Where any person shall be desirous to have a special case re-heard, or to appeal from the decision thereon, it shall be lawful for the said courts respectively, upon application for that purpose, either at the time of the decree or judgment upon such special case, being made, or at any time afterwards, and upon such conditions, if any, as the court shall think fit, to order that the declaration contained in such decree shall not be acted upon for such time as the said courts respectively shall think just.

The Court may suspend the acting upon declaration.

XVI. The filing of a special case, and the entering of appearances thereto by the persons named as defendants therein, shall be taken to be a *lis pendens*.

Special case to be a *lis pendens*, and may be filed.

XVII. Any documents referred to in a special case, and any copies thereof or extracts therefrom, identified by the signature of the solicitors for all parties, may be produced and read at the hearing of such case, without further proof; and it shall be lawful for the said courts respectively, at any time after the filing of the special case, and the entering of appearances thereto by the persons named as defendants

Mode of identifying documents, and Court may order production.

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therein, to order any document, which may be admitted thereby to be in the possession of any party to such case, to be deposited and produced in such manner and for such purposes as the said courts respectively shall think fit.

Court, on application of executors or administrators, may by order of course direct it to be referred to a master to take an account of debts and liabilities.

XVIII. It shall be lawful for the said courts upon the application of the executors, administrators or representatives in estate of any deceased person, by order to be made upon motion or petition of course, and to be in the form or to the effect set forth in the schedule hereto, with such variations as circumstances may require, to refer it to the master of the said courts respectively to take an account of the debts and liabilities affecting the estate of such deceased person, and to report thereon; provided always, that no such order shall be made until the expiration of one year next after the death of such deceased person, or pending any proceedings to administer the estate of such person, and in case at any time after the making of such order, any decree or order for administering the estate of such deceased person shall be made, it shall be lawful for the said courts respectively, by such decree or order, to stay or suspend the proceedings under such order of course on such terms and conditions, if any, as to the said courts respectively shall seem just.

Master's report may be objected to by motion to the Court, of which notice shall be given.

XIX. It shall be lawful for any person who may have come in before the master under any such order, and claimed to be a creditor upon the estate of the deceased person, or to have any demand upon such estate by reason of any liability, and whose debt or claim may not have been wholly allowed by the said master, to apply to the court making such order by motion, of which notice shall be given within fourteen days after the filing of the master's report, to have such claim allowed by such court, either wholly or partially; and it shall be lawful for the said executors, administrators or representatives in estate, and for any creditor of the deceased person who may be authorized by special leave of the said court so to do, to apply to the said court by motion, of which notice shall be given within the time aforesaid, to have any debt or claim allowed by the said master disallowed by the said court, either wholly or partially, and at the expiration of fourteen days after the filing of the said

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report, the same shall, except as to any debt or claim as to which any such notice as aforesaid may have been given, be absolute, as if the same had been confirmed by order of the said court.

Proceeding of the Court on such motion.

XX. Upon the hearing of any such motion as aforesaid, the said courts respectively may either dismiss such motion, or may order the debt or claim to which such motion relates to be allowed, or disallowed, as the case may be, and either wholly or partially, or may direct further inquiry or further proceedings, by way of action or otherwise, touching such debt or claim, and after such inquiry or proceedings may, upon further motion, deal with such debt or claim as to the said courts respectively shall seem just; provided always, that no new evidence shall be received by the said courts upon the hearing of any such motion without special leave of the said courts.

If debts or certain liabilities allowed and not paid or provided for, order may be made for payment of accounts.

XXI. In case any debt or any certain liability shall have been allowed as aforesaid, and shall not within fourteen days after the report has become absolute as to such debt or liability, or after the same shall have been allowed by the said court, be paid or provided for by appropriation to the satisfaction of the person who has established such liability, it shall be lawful for the said courts respectively by order to be made, in case of any debt remaining due, upon the application by motion or petition of the person to whom the debt remains due, and on notice to the executors, administrators, or representatives in estate, and in case of any certain liability remaining unprovided for by appropriation, upon the application by motion or petition of the person by whom such liability has been established, or of the executors, administrators, or representatives in estate, and on notice by the party applying to the other of them, to order payment of the debts which may have been allowed and remain unpaid, and to provide for the certain liabilities which may have been allowed and remain unprovided for, in like manner as the same could or might have been paid or provided for in a suit for that purpose instituted by bill, or to refer to the master to take an account of the debts and certain liabilities allowed as aforesaid which remain unpaid or unprovided for, and also the usual accounts of the estate

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of the deceased person, with all usual and proper direction; and every such order shall have the same force and effect, and shall be prosecuted and carried on in like manner as a decree in a creditor's suit instituted by bill.

Accounts to be taken according to usual practice of the Courts.

XXII. Nothing in Sections XVIII. and XXI. of this Act contained shall be construed so as to prevent any of Her Majesty's courts from taking such accounts as aforesaid in any manner in which, according to the usual practice of such courts, the same might have been taken if directed by a decretal order made in a suit.

Courts on application of executors or administrators, &c. may direct appropriation of money to answer contingent liability.

XXIII. In case any contingent liability shall be allowed by the said report or by the said courts respectively, it shall be lawful for the said courts, by order, to be made upon the application of the executors, administrators, or representatives in estate, by motion or petition, on notice to the person who may have established such contingent liability, to order such sum of money, part, or proceeds of part, of the estate of the deceased person, as to the said courts respectively shall seem just, to be set apart and appropriated for answering such contingent liability, and to give such directions as the said courts shall think fit touching the payment of such sum of money into courts and the investment thereof, and the payment, application, or accumulation of the interest or dividends thereof in the meantime and until the same shall be required to answer such liability, and when such liability shall be ascertained or determined, to give such directions as to the payment of such sum out of court as the said courts respectively shall deem right: Provided always, that no order to be made as aforesaid shall in any manner bind the assets so appropriated as against the persons entitled to the estate of the deceased subject to the contingent liability; and any person interested in such appropriated assets may apply to the court touching the same, as he may be advised.

Court may restrain proceedings against executors, administrators, &c.

XXIV. After the filing of such report as aforesaid, it shall be lawful for the said courts respectively upon the application of the executors, administrators, or representatives in estate of the deceased, by order, to be made on motion, to restrain by injunction any proceedings at law against

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them by any person having or claiming to have any demand upon the estate of the deceased by reason of any debt or liability other than the persons who may have established contingent liabilities under the said order for which no appropriation may have been made.

Protection to be afforded to executors, administrators, &c.

XXV. In case no debt or liability, or no debt or liability other than a contingent liability, shall have been allowed as aforesaid, or in case any debt or liability other than as aforesaid shall have been allowed as aforesaid, then after the same shall have been paid or provided for by appropriation as aforesaid, all payments made by the executors, administrators, or representatives in estate, or any of them, on account of the estate of the deceased person, and all dispositions of such assets made by them or any of them on account of such estate, shall as against all persons having or claiming to have any demand upon such estate by reason of any debt or liability, other than persons who may have established under the said order any contingent liability for which no such appropriation as aforesaid may have been made, be as good and effectual as if the same had been made under a decree of the said courts respectively: Provided always, that nothing herein contained shall in any manner affect or prejudice the rights of any creditor, or other person having any demand or claim upon the estate of the deceased against any assets so paid or disposed of, or against the persons to whom such payment or disposition may have been made, or against any assets appropriated under the provisions of this Act, and the appropriation of which, if made a decree of the said court, in a suit to which he was not a party, would not have been binding upon him.

Exceptions for scandal, impertinence and insufficiency to be heard by the Court.

XXVI. All exceptions for scandal, impertinence, and insufficiency, which according to the existing practice of the said courts are referred to the masters of the said courts, shall not any longer be so referred, but shall be heard and determined in the first instance by the said courts, or any judge thereof.

Power of Court, notwithstanding any

XXVII. Notwithstanding any rule or practice of the said courts to the contrary, it shall be lawful for the said

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rule, &c. to the contrary, to receive proof by affidavit.

courts respectively, at the hearing of any cause or of any further directions therein, to receive proof by affidavit or otherwise of all proper parties being before the court, and of all such matters as are necessary to be proved for enabling the said courts respectively to order payment of any monies belonging to any married woman, and of all such other matters, not directly in issue in the cause, as in the opinion of the said courts respectively may safely and properly be so proved.

Her Majesty's Courts to make general rules and orders from time to time.

XXVIII. It shall be lawful for the said courts respectively, from time to time, to make, rescind, and alter general rules and orders for better enabling the opinion of the said courts respectively to be obtained on special cases, and for effectuating the purposes of this Act as to the debts and liabilities of deceased persons, and for making any provisions which may be or be deemed necessary or proper as amendment, revivor and supplemental matter or relief, and as to costs of any proceedings under or in pursuance of this Act, and for regulating the times and form and mode of procedure and practice of the said courts in respect of the matters to which this Act relates, and every of them, and so far as may be found expedient for altering the course of proceeding herein before prescribed in respect to such matters or any of them, and generally for assimilating the practice of the said courts respectively to that of the High Court of Chancery in England.

Rules and orders to be laid before the Governor General in Council, and to be binding from the time appointed or from the making, unless objected to.

XXIX. All such general rules and orders shall be laid before the Governor General of India in Council within one month after the making and issuing of the same, and every such rule or order shall, from and after the time in that behalf to be appointed by the said courts respectively, and if no time shall be so appointed, then from and after the making thereof, be binding and obligatory on the said courts respectively, and be of like force and effect as if the provisions therein contained had been expressly enacted by the Governor General of India in Council. Provided always, that if the said Governor General of India in Council shall by any resolution passed at any time within six months after such rules, orders and regulations shall have been laid before him, resolve that the whole or any part of such rules

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or orders ought not to continue in force, in such case the whole or such part thereof as shall be included in such resolution shall, from and after the time that such resolution is notified to the said court, cease to be binding and obligatory on the said court; provided that every such rule or order so made or expressed to be made in pursuance of this Act which shall not be laid before the Governor General of India in Council within the time by this Act limited for that purpose shall, from and after the expiration of such time, be absolutely void and of no effect. Provided always, that nothing in this clause contained shall be construed so that the said rules or orders should not be transmitted as heretofore to Her Majesty in Privy Council for approbation.

Until rules or orders are made, and if not applicable when made, practice to be according to this Act and practice of the Court.

XXX. In the meantime and until any such general rules or orders shall be made, and in so far as the same, when made, shall not be applicable, the proceedings under this Act shall be governed and regulated by the provisions herein contained, so far as the same extend, and in so far as the same do not extend shall, as well with respect to the persons who ought to be made parties to special cases as in every other respect, be governed and regulated by the rules, orders and practice of the said courts respectively, in suits instituted by bill, so far as the same can be applied thereto; and subject to such general rules and orders as aforesaid, the costs of all proceedings under this Act shall be in the discretion of the said courts respectively.

Decrees and orders to be subject to appeal, &c.

XXXI. All decrees and orders made under the provisions of this Act, shall be subject to re-hearing, appeal, and review, and may be discharged and varied in the same and the like manner as decrees and orders of the said courts made in suits instituted by bill.

Interpretation of terms.

XXXII. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or in the context repugnant to such construction:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

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Words importing the masculine gender only shall include females:

The expression "Her Majesty's Courts" or "Courts" shall mean and include Her Majesty's Supreme Courts of Judicature at Bengal, Madras and Bombay, and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca:

The word "Lunatic" shall include idiots and persons of unsound mind, and whether found such by inquisition or not:

The word "Guardian" shall mean father or testamentary guardian, or guardian appointed by any of Her Majesty's Courts (not being a special guardian appointed under the provisions of this Act.)

Commencement of Act.

XXXIII. This Act shall commence and take effect from and after the tenth day of April One thousand eight hundred and fifty-two.

Schedule referred to by the foregoing Act.

(*Date.*)

In the matter of A. B. late of in Banker (or as the case may be), deceased.

Upon motion this day made into this Court by Mr of Counsel for C. D. of the executor (*or* administrator) of the abovenamed A. B. (*or* upon the humble petition of C. D. of) the executor (*or* administrator) of the said A. B. this day preferred unto the Supreme Court of Judicature at for the reasons therein contained, it is ordered, that it be referred to the Master of this Court to take an account of the debts and liabilities affecting the (*personal or the real estate of the said A. B., or his movable and immovable estate, as the case may be,*) and to compute interest on such of the said debts and liabilities as carry interest after the rate of interest the same respectively carry; and the said Master is to cause an advertisement to be published in the Gazette, and such other public papers as he shall think fit.

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for the persons claiming in respect of any such debts or liabilities to come in before the said Master, and prove their debts and claims, and he is to fix a peremptory day for that purpose; and such of the creditors as shall not come in and prove their debts and claims by the time so to be limited, are to be excluded the benefit of this order; and it is ordered, that the Masters do distinguish debts from liabilities, and liabilities certain from liabilities contingent; and it is ordered, that the said estate of the said A. B. be applied in payment and satisfaction of such debts and liabilities of the said A. B. in a due course of administration; and for the better taking the said accounts and discovery of the matters aforesaid, the parties are to produce before the Master, upon oath, all deeds, books, papers, and writings in their custody or power relating thereto, and are to be examined upon interrogatories or *vivâ voce* as the said Master shall direct; and any of the parties are to be at liberty to apply to the Court as there shall be occasion.

A. D. 1852. ACT XXXIII.*

AN ACT *to facilitate the enforcement of Judgments in Places beyond the jurisdiction of the Courts pronouncing the same.*

Passed on the 27th August 1852.

Judgments to be enforced beyond jurisdiction of Court granting them.

I. Every party, who shall have obtained a judgment in any court of Her Majesty or of the East India Company, in any part of the territories under the Government of the East India Company, or in any court established by the authority of the Governor General of India in Council in the territory of any foreign prince or state, and who shall be unable to enforce or obtain satisfaction of the same by execution within the jurisdiction of such court, may enforce or obtain execu-

* This Act (as well as Act XXXIV. of 1855 q. v., passed to explain and amend this Act) has been repealed by Act X. of 1861, except so far as it relates to the enforcement of judgments by any court established by Royal Charter, and also except so far as it relates to enforcement of decrees of military courts of requests. With respect to the execution of a decree out of the jurisdiction of the court by which it was passed, *See Secs.* 284 *to* 296, *Act VIII. of* 1859.

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tion of the same in any part of the said territories under the Government of the East India Company in manner following:

Court to grant, if no objection, copy of judgment, &c.

II. The party may apply to the court which shall have pronounced such judgment, for a copy thereof, and also for a certificate that satisfaction of such judgment has not been obtained by execution within the jurisdiction of the said court, also for a copy of any order for execution of such judgment that may have been passed, and, if necessary, for a translation of the said judgment and order for execution into the English language. The court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate, and translation if necessary, to be furnished, and the same shall be signed by the judge, or one of the judges of the court, and sealed with the seal of the court.

Nature and name of Court of original jurisdiction to appear.

III. *If such court shall be the principal civil court of original jurisdiction in the district, the judge shall describe himself accordingly in the certificate, and shall also name the court and the district.*

Judgment of inferior Court to be authenticated by principal civil court.

IV. *If the court shall not be the principal civil court of original jurisdiction in the district, the copy of the judgment and of the order for execution, if any, the certificate of the judge, and the translation, if any, shall, without delay, be transmitted to the principal civil court of original jurisdiction in the district, and the judge, or one of the judges of such court, shall issue a certificate under his hand and the seal of the court, verifying the signature of the judge of the court in which the judgment shall have been given to the documents abovementioned; and in such certificate the judge signing the same shall describe himself as the judge, or one of the judges, of the principal civil court of the district, and shall also name the court and the district.*

Documents to be transmitted to Court of district where to be executed, and filed there.

V. All copies, translations, and certificates, which may be furnished by, or transmitted to the principal civil court of original jurisdiction in the district in which such judgment shall have been given, shall be transmitted by such court without delay to the principal civil court of original jurisdiction in the district in which the party may wish to have the judgment enforced or executed, and if such last-

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mentioned court be the Supreme Court of Judicature of either of the presidencies, to the prothonotary of the court; and such court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the translations, if any, or of the seal or jurisdiction of any court, or of the signature of any judge, unless the court to which such documents shall be transmitted, shall, under peculiar circumstances, to be specified in an order, require the same.

To have same effect as judgment of such Court.

VI. The copy of any judgment, or of any order for execution, when filed in the court to which it shall be transmitted for the purpose of being executed or enforced as aforesaid, shall for such purpose have the same effect as a judgment or order for execution made by such court, and may be enforced or executed by such court, or any court subordinate thereto, to which it may intrust the enforcement or execution thereof.

And to be enforced according to usual practice.

VII. When application shall be made to any of the said courts to enforce, or execute the judgment of any other court as aforesaid, the court to which the application shall be made, or referred, shall proceed to enforce or execute the same according to its own rules and mode of procedure in like cases; and the last mentioned court shall take cognizance of, and punish all wrongful acts or irregularities done or committed in enforcing and executing such judgment; and all persons disobeying or obstructing the enforcement or execution of any such judgment, shall be punishable by such last-mentioned court, in the same manner as if the said judgment had been pronounced by such court.

Provisions of this Act to extend to decrees of military courts of requests.

VIII. The decrees of which execution is to be general, of any military courts of requests holden within the said territories under the Government of the East India Company, or mentioned in Section XVII. Act No. XI. of 1841, may be enforced in the manner provided by this Act. No such decree, however, shall be enforced under this Act against the person of the debtor, if a soldier. In the case of a decree of a military court of requests, the copy, decree, and certificate, and translation, if any, shall be signed by the officer

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How to be authenticated, &c.

commanding the station or cantonment, who shall describe himself accordingly; and no proof of the decree, or of the signature or appointment of such officer, or of the jurisdiction of the court, shall be necessary, unless the court to which the same may be presented shall think fit under any peculiar circumstances, to be specified in an order, to require the same.

IX. Repealed by Act VII. of 1870.

Appeal against execution.

X. *An appeal shall lie from any order for the enforcement or execution of a judgment under this Act, in the same manner, and subject to the same rules and regulations, as if the judgment had been originally given by the court making such order.*

Interpretation of words.

XI. In this Act the word "judgment" means a judgment in a civil suit or proceeding, and includes any final decree or order in a civil suit or proceeding. The word "party" shall include any person who would be entitled to maintain a suit upon the judgment. The masculine gender shall include the feminine, and the singular number shall include the plural.

A. D. 1853. ACT XX.

AN ACT *to amend the Law relating to Pleaders in the Courts of the East India Company.*

Passed on the 8th December 1853.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; it is enacted as follows:—

I. Repealed by Act XIV. of 1870.

Pleaders not bound to attend Court except when they have a cause.

II. No pleader shall be bound to attend in any of the courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the court, may be heard or transacted therein on that day, any thing in any law or regulation to the contrary notwithstanding.

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III. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the sudder courts of the East India Company, subject however to all the rules for the time being in force in the said sudder courts respectively, applicable to barristers pleading therein, whether relating to the language in which the court is to be addressed or to any other matter. Attornies of Supreme Court may plead as Barristers in Sudder Court.

IV. That part of Section IV, Act I. of 1846, which provides that no person shall be admitted a pleader in any of the courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the sudder courts that he is of good character and duly qualified for the office, shall not extend to barristers or attornies of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the courts of the East India Company subordinate to the sudder courts, subject to all rules in force in the said subordinate courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the court is to be addressed or to any other matters connected with pleading therein. Barristers, &c. exempt from specified part of Section IV, of Act I. 1846, and may plead in Mofussil Courts.

A. D. 1854. ACT XXXI.

AN ACT *to abolish real actions and also fines and common recoveries, and to simplify the modes of conveying land in cases to which the English Law is applicable.*

Passed on the 16th December 1854.

WHEREAS it is expedient, in cases to which the English law applies, to abolish real actions and also fines and common recoveries, and to simplify the modes of conveying land, and to exempt the purchasers of trust property from the liability to see to the application of the purchase money; it is enacted as follows:— Preamble.

I. Repealed by Act XIV. of 1870.

II. Every tenant in tail, or other owner of an estate of inheritance less than an estate in fee simple, either at law or Tenant in tail may dispose of or enlarge

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his estate by simple deeds, &c.

in equity, in any lands or hereditaments not being under any disability, shall have power to dispose of such lands and hereditaments against the issue in tail, and all persons whose estates are to take effect after the determination or in defeazance of his own, or to enlarge his said estate into an estate in fee simple, by any deed declaring an intention so to dispose of the said lands or hereditaments, or to enlarge his estate therein; and every tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, who shall be under the disability of coverture, shall have power to dispose of or enlarge her said estate in manner aforesaid, by any deed declaring her intention so to do, and acknowledged by her as hereinafter mentioned. Provided that every disposition under this section shall be subject to the rights of all persons in respect to estates prior to the estate tail or other estate of inheritance which is the subject of such disposition, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made.

A married woman, with her husband's concurrence, empowered to dispose of her estate by deed acknowledged, &c.

III. Every married woman who, either alone or jointly with her husband, is possessed of, or entitled to any estate or interest in or any power to be exercised over any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender, or extinguish any such estate, interest, or power, as fully and effectually as if she were an unmarried woman.

Provision to apply to money subject to be invested in lands.

IV. The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments.

Execution of deeds by married woman.

V. No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual, unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed before a judge of one of Her Majesty's Supreme Courts, or before a judge or other covenanted officer of the East India Com-

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any exercising civil jurisdiction in the place wherein such deed shall be acknowledged, or before some commissioner appointed either specially for the occasion, or appointed as a permanent commissioner by one of Her Majesty's said courts to take such acknowledgments.

If husband be lunatic, &c. Court may direct acknowledgement by deed without his concurrence saving right of the husband, &c.

VI. If the husband of any married woman, desirous of enlarging, passing, or destroying any estate, interest, or power, by a deed to be acknowledged by her under this Act, shall be a lunatic, idiot, or of unsound mind, whether he shall have been found such by inquisition or not, or from any other cause shall be incapable of executing a deed, or if his residence shall not be known, or if he shall be in prison, or living apart from his wife either by mutual consent, or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for any of Her Majesty's said courts, by an order to be made in a summary way upon the application of such married woman, and upon such evidence as to the Court shall seem meet, to dispense with the concurrence of her husband in the deed so to be acknowledged; and any deed to be executed or acknowledged by her in pursuance of such order shall (but without prejudice to the rights of her husband as then existing, independently of this Act), be as valid and effectual as if he had concurred therein.

Supreme Courts may appoint for the purpose of taking such acknowledgment, permanent or special commissioners.

VII. It shall be lawful for any of Her Majesty's said courts to appoint, by its order, under the seal of the court, to be published in the *Government Gazette*, or otherwise as the court shall direct, permanent commissioners, either by name or office, and to appoint from time to time, under special commissions, special commissioners, any one of whom shall be authorized and empowered, unless the Act is directed to be done before more than one, to take the acknowledgment of any deed by any married woman, who, by reason of her place of residence, or ill health, or other sufficient cause, shall be unable to make such acknowledgment before one of the judges or other officers described in the preceding section.

Such married woman to be examined apart

VIII. Every such judge, officer, or commissioner as aforesaid, before he shall receive the acknowledgment by any

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before Judge, &c. taking her acknowledgment.

married woman of any deed to be acknowledged by her under this Act, shall examine her apart from her husband, touching her knowledge of such deed, and shall ascertain whether she understands its object and freely and voluntarily consents to the same, and unless she appears to understand its object, and freely and voluntarily to consent to such deeds, he shall not permit her to acknowledge the same, and in such case, such deed, so far as relates to the execution thereof by such married woman, shall be void.

Judge, &c. shall sign a memorandum of acknowledgment—form of it.

IX. Every judge, officer, or commissioner, taking such acknowledgment under this Act, shall, at the time of taking the same, sign a memorandum to be endorsed on or written at the foot or in the margin of such deed, which memorandum shall be to the following effect, namely, "this deed marked ( ) was this day produced before me and acknowledged by therein named, to be her act and deed, previous to which acknowledgment the said was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed and her consent thereto, and appeared to understand the same, and declared the same to be freely and voluntarily executed by her."

Deed of married woman to take effect from time of acknowledgment.

X. Every deed executed by a married woman and hereby required to be acknowledged, shall, so far as regards the interest of such married woman, take effect only from the time of the acknowledgment thereof.

Deed when presumed to have been duly acknowledged.

XI. It shall not be necessary for any person producing a deed so acknowledged in any court of justice, to prove the handwriting or authority of the judge or other officer, or the commissioner taking such acknowledgment, but if such memorandum purports to have been in substance regularly made and signed, the deed shall be presumed to have been duly acknowledged by the party, until the contrary is shewn.

Nothing in this Act to abridge the powers of alienation which a married woman possessed before.

XII. Nothing in this Act contained shall abridge, extend, or affect the powers of alienation or disposition, which any married woman might have exercised over any property or rights, otherwise than by levying a fine or suffering a recovery, or by joining in one of such assurances before the passing of this Act.

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Contingent estates, in deeds or wills, without trustees to preserve, to be protected by the law from destruction.

XIII. In any deed or will executed after this Act comes into operation, and disposing of immoveable property situate in the territories in the possession and under the Government of the East India Company, wherein contingent estates are limited without the appointment of any trustees to preserve such contingent estates, the same shall be, to all intents and purposes, as effectually protected by the law, as if such trustees had been duly appointed.

Estates may be conveyed, &c. by deed, though not operating under the Statute of Uses.

XIV. Any estate or interest in immoveable property situate within the said territories, whether in possession, remainder, or reversion, may, in addition to any other mode of conveyance or release which is now valid, be conveyed, passed, or released by a simple deed, whether such deed operate under the Statute of Uses or not.

No conveyance to operate tortuously.

XV. No conveyance of any kind shall operate to destroy, impair, or affect any estate or interest which the conveying party has no right to destroy, impair, or affect, or beyond the extent to which he may impair or affect the same.

Words of limitation not necessary in a deed to give estate by inheritance.

XVI. It shall not be necessary in any deed relating to immoveable property situate within the said territories, to be executed after the passing of this Act, to add words of limitation to heirs, when the intention is to give the absolute interest to a person and his heirs general; but a gift, grant, or other conveyance of immoveable property to, or in favor of any person, shall be taken to give him the entire and absolute interest in the nature of an estate in fee simple, unless such construction is rendered inadmissible by the other contents of the deed; and when in any deed or will executed after the passing of this Act any property is given to a person for life or for other freehold interest, and afterwards in the same deed, or will, is limited to his heirs or heir special, the estates shall not unite, but the limitation to the heirs shall be a limitation of an estate to be taken by the heirs by purchase.

Estate limited to heirs shall not unite with a prior life estate.

Bonafide purchaser not required to see to application of trust money in any case.

XVII. When any property is sold, the proceeds of which are subject to any trust, the *bonâ fide* purchaser of the property shall not in any case be bound to see to the application of the purchase money to the purposes of the trust.

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Act to apply only to cases governed by English law.

XVIII. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

Interpretation.

XIX. The term "Her Majesty's Supreme Courts" shall include the Courts of Judicature of Prince of Wales' Island, Singapore, and Malacca.

A. D. 1855. ACT VI.

AN ACT *to extend the operation of, and regulate the mode of executing Writs of Execution in Her Majesty's Supreme Courts of Judicature.*

Passed on the 17th February 1855.

Preamble.

WHEREAS it is desirable to extend the operation of, and regulate the conduct of writs of execution out of Her Majesty's Supreme Courts in certain cases; it is enacted as follows:—

Sheriff empowered under any writ of *fieri facias* issued on any side of Supreme Court to seize and sell immoveable property.

I. *Clause* 1. Under any writ of *fieri facias* issued out of any of Her Majesty's Supreme Courts, on any side of the court, may be seized and sold any lands, houses or other immoveable property of the party against whose effects such writ issues, whether his estate or interest therein be legal or equitable.

When property is in possession of judgment debtor, Sheriff to put purchaser in possession.

Clause 2. The sheriff under any such writ may put the purchaser in possession of such of the lands, houses or other immoveable property sold under such writ, of which the judgment debtor is in the actual possession, and of which an actual delivery can be made.

When property is not in possession of judgment debtor, Sheriff not to seize but to sell debtor's interest.

Clause 3. If the lands, houses or other immovable property liable to be sold under such writ, be in the possession of any person other than the judgment debtor, the sheriff shall not seize such property, but shall sell and convey all the right, title and interest of the debtor; and such conveyance shall pass the same interest to the purchaser as if the same had been executed by the debtor.

Effect of conveyance.

Sale when to be notified to Judge of district.

Clause 4. In such last mentioned case, if the property shall be situate beyond the local limits of the jurisdiction of such court, the sheriff shall notify such sale to the judge of

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the district, who shall cause notice of the same to be officially proclaimed, in like manner as if the sale had been effected under a decree of his own court. Proclamation of same.

Clause 5. In any case of intended sale of immoveable property beyond the local limits of the jurisdiction of such Supreme Court, the sheriff shall cause a notice, specifying the time and place of the intended sale, to be stuck up in some conspicuous place in the office of the Collector of the district within which such property is situate, and also at the mal cutcherry of the estate, if any; otherwise on some conspicuous part of the property to be sold. The number of days between the publication of such notice and the sale shall not be less than fourteen days, if the property be not distant more than 100 miles from the Supreme Court; if the distance shall exceed 100 miles, the number of days shall be increased by an additional day for every 50 miles of such excess of distance. Provided that the want of such notice or any irregularity in respect thereof, shall not vitiate the sale in the hands of a *bonâ fide* purchaser. Notice of sale when to be published in the office of Collector, &c. Length of time for publication of notice. Proviso.

II. If any lands, houses or other immoveable property be seized or liable to be sold under any such writ, it shall be lawful for the court, on application to it on behalf of the execution debtor or of any one of several execution debtors, if the court shall be satisfied that there is reasonable ground to believe that the amount of the judgment may be raised by mortgage of the estate, to postpone the sale for a term not exceeding one month, to enable the defendant to raise the amount, and to direct that the money ordered to be levied by such execution shall be raised by mortgage instead of sale of such lands, houses or other immoveable property, upon such terms as to the payment of interest upon the judgment or otherwise as the court may think fit, and in such case to give all necessary directions for the execution of such mortgage. In what case judgment debt may be raised by mortgage instead of sale.

III. Under any such writ of *fieri facias* may also be seized money, bank-notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, and also debts belonging to the said person; and the Sheriff or other officer having the exe- Sheriff empowered under any such writ of *fieri facias* to seize money, bank notes, &c.

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And to pay money or bank-notes to execution creditor.

And with the order of the Court to endorse over, and without such order to hold cheques, bills of exchange, &c.

And to sue in his own name for amount secured by bills of exchange, &c. Or for debts.

cution of the writ, shall be at liberty to pay or deliver over to the party suing out such execution, any money or bank-notes which shall so be seized, or a sufficient part thereof and shall, with the order of the court, endorse over or transfer, and without such order, shall hold any such cheques, bills of exchange, promissory notes, hoondees, bonds, or other securities for money as a security or securities for the amount by such writ of *fieri facias* directed to be levied, or so much thereof as shall not have been otherwise levied and raised, and may, where he retains the same, sue in his own name as such sheriff or officer, for the recovery of the sum or sums secured thereby, or for any debt seized as aforesaid when the time of payment thereof shall have arrived; and the payment to such Sheriff or other officer, or to the party entitled under such endorsement or transfer, by the party liable, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution as the case may be, from his liability on any such cheque, bill of exchange, promissory note, hoondee, bond, security, and debt; and such sheriff or other officer shall pay over to the party suing out such writ, the money so to be recovered, or such part thereof as may be sufficient to discharge the amount by such writ directed to be levied; and if, after satisfaction of the amount so to be levied, together with sheriff's poundage and all lawful charges and expenses, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued, unless the same is duly attached in the hand of such sheriff or other officer. Provided that no sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, hoondee, bond, security, or debt, unless the party suing out such execution shall give security to the sheriff for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof; the nature and amount of such security to be determined, in case they cannot agree by the proper officer of the court in which such action shall be brought, or, if the court shall so order, by some other person to be appointed

Proviso as to indemnity for Sheriff.

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by the court for such purpose; and the expense of preparing and executing such security shall be deducted out of any money to be recovered in such action, and the net proceeds only in this and other cases provided for by this Act shall be considered as received in satisfaction of the debt due to the execution creditor.

Sheriff empowered to receive interest on Government security seized by him.

IV. If the sheriff or other officer under any writ of *fieri facias* shall seize any Government security standing in the name of, or belonging to the party against whose property such writ shall be issued, he shall have power to receive the interest due on such Government security whether specially endorsed or otherwise, and to sign a receipt for the same; and also to sell and dispose of such Government security through a broker at the market rate of the day; and if the endorsement of such party shall be required to transfer such Government security, the sheriff or other public officer shall endorse the same thus, "A. B. by C. D. Sheriff;" and such endorsement shall be as effectual to pass the said Government security and to give a good title to the holder thereof as if the same had been endorsed by the party himself or his duly constituted attorney.

And to sell, and where endorsement necessary, to endorse such security.

No debt to be sold by Sheriff.

V. No debt shall be sold by the sheriff under the process of the said court, any charter of any of the said Supreme Courts to the contrary notwithstanding; but the same shall be realized in the mode hereinbefore directed.

Shares in public company may be charged in execution.

VI. If any person against whom any writ of execution shall have issued, shall have any interest in any stock or shares in any public company, whether incorporated or not, carrying on business in India and within the reach of the process of the court out of which such writ of execution has issued, it shall be lawful for the said court or for any judge thereof, on the application of the party who has sued out such writ of execution, to make an order *ex parte* that such interest in such stock or shares, on such of them or such part thereof respectively as the said court or judge shall think fit, shall stand charged with the payment of the amount due in respect of such writ of execution; and such order shall have the like effect and entitle the person in whose favor the same is made, to the same remedies and priorities as a charge ex-

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cuted in favor of such person by the person against whom execution shall have been issued; and service or notice of such order upon or to the public company whose stock or shares are the subject of such order, or upon or to any person claiming an interest in such stock or shares, shall have the like effect and shall entitle the person in whose favor such order is made to the same remedies against such public Company or such last mentioned person as notice of a charge executed of even date with such order by the person against whom execution shall have been issued in favor of the person at whose suit the same shall have been issued. Provided that nothing herein contained shall prevent the person against whom such order shall have been made, or any other person affected thereby, from applying to the court or judge by whom such order has been made, for its discharge on such grounds as may be just.

Proviso.

Property standing in name of any officer of Court.

VII. If such debtor shall have any interest in any property which shall be standing in the name of the accountant general of the court, or of any other officer of the court, or in the dividends, interest, or annual produce thereof, it shall be lawful for the court or a judge to make an order that the interest of the defendant in such property shall be applied in payment of such debt, and the court or judge shall have power to make such order as may be necessary to give full effect to the above provision.

Party arrested under a *Ca. Sa.* entitled to discharge on payment or tender of the amount of levy to opposite party or his attorney or to sheriff or gaoler.

VIII. A plaintiff or defendant arrested under any writ of *capias ad satisfaciendum* issued upon any judgment, order, decree or sentence of any of the said courts whereby money is ordered to be paid to any party, shall be entitled to his discharge from such arrest on payment or tender to such party or his attorney in the cause, or to the sheriff or Gaoler in whose custody such person may be under such writ, of the amount directed to be levied by such writ.

Written order of attorney issuing *Ca. Sa.*, sufficient for the discharge of a party by sheriff or gaoler, unless the client shall give written notice to the contrary.

IX. A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* shall have been issued, shall justify the sheriff, gaoler, or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to

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the contrary to such sheriff, gaoler, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Attorney not justified in giving order for discharge without the consent of his client.

X. A sheriff shall not be liable in an action for escape or other breach of duty, to pay damages beyond the amount of the loss which his breach of duty has really occasioned.

Sheriff not to be liable for escape, &c. beyond the amount of the loss really occasioned.

XI. A writ of execution sued out after the commencement of this Act, if unexecuted, shall not remain in force for more than one year from the date of such writ, unless renewed in the manner hereinafter provided; but a writ of execution, whether sued out before or after the passing of this Act, may, at any time before its expiration, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, by being marked with the seal of the court and with a memorandum, signed by the officer, of the date of the day, month and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the court and memorandum signed by the officer as aforesaid; and a writ of execution so renewed shall have effect and be entitled to the same priority as the original writ would have had. Provided however that no writ of *habere facias possessionem* shall be renewed without the special leave of the court or a judge.

Writ of execution, if unexecuted, not to remain in force more than one year unless renewed.

But may be renewed from time to time.

Renewed writ entitled to same priority as its original.

Proviso as to writ of Habere.

XII. The production of a writ of execution or of the notice renewing the same, purporting to be marked with such seal and signed as aforesaid, showing the same to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed.

Production of writ or of notice of renewal sufficient evidence of renewal.

XIII. All property of every kind that may be seized under a writ of *fieri facias*, issued from the said Supreme Courts respectively, may be seized also under a writ of sequestration duly issued from the same, and the seizure must in all cases be made in the mode directed by this Act as to

Under a writ of sequestration all property may be seized in like manner as under a *fieri facias*.

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Sum ordered to be realized may be levied as under a *fieri facias*.

seizures under writs of *fieri facias*, and any sum ordered by the court to be realized by a sequestration, shall be realized in the same mode, and not otherwise, as if directed to be levied under a writ of *fieri facias*.

Interpretation clause.

XIV. The words "person" and "party" as used in this Act, shall be understood to include any body corporate, and though used so as to import the singular number or the masculine gender only, shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction; and the term "Her Majesty's Supreme Courts" shall be understood to include the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca.

A. D. 1855. ACT X.*

AN ACT *to amend the Law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay, and to amend the provisions of Section XL, Act XIX. of* 1853.

Passed on the 21st March 1855.

In what case a witness not being a party to the suit in which he is summoned is bound to produce his title-deeds.

IX. A witness not a party to the suit or proceeding in which he is summoned, shall not be bound to produce his own title-deeds, unless he shall have agreed in writing with the party requiring the production thereof, or with some person through whom he claims to produce such deeds.

Person not obeying summons, &c., liable for damages in a civil action.

X. Any person, whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document shall be personally delivered, and who shall, without lawful excuse, neglect or refuse to obey such summons, or who shall be proved to have absconded, or kept out of the way to avoid being served with such summons, and any person who, being in court, and upon being required by the court to give evidence or produce a document in his possession, shall, without lawful excuse, refuse to give evidence or

* The whole of this Act, except Sections IX and X, repealed by Act X. of 1861.

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sign his deposition, or to produce a document in his possession, shall, in addition to any proceeding to which he would otherwise be subject, be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way as aforesaid, to be recovered in a civil action.

A. D. 1855. ACT XI.

AN ACT *relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable.*

Passed on the 27th March 1855.

Preamble.

WHEREAS it is expedient, in cases to which the English law is applicable, to limit the liability for mesne profits, and to secure to *bonâ fide* holders under defective titles the value of improvements made by them; it is enacted as follows:—

No person to be chargeable with rent *bonâ fide* paid to a holder under defective title.

I. No person shall be chargeable with any rents or profits of any immovable property which he has *bonâ fide* paid over to any person of whom he *bonâ fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made, had no right to receive such rents or profits.

Value of improvements made by *bonâ fide* holders under defective titles secured to them.

II. If any person shall erect any building or make an improvement upon any lands held by him *bonâ fide* in the belief that he had an estate in fee simple, or other absolute estate, and such person, his heirs or assigns, or his or their undertenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest

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Value how to be estimated.

of such person in the lands at the value thereof irrespective of the value of such building or improvement. Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

Act to apply only to cases governed by English law.

III. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

A. D. 1855. ACT XII.

AN ACT *to enable Executors, Administrators or Representatives to sue and be sued for certain wrongs.*

Passed on the 27th March 1855.

Preamble.

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives; it is enacted as follows:—

Executors may sue and be sued in certain cases for wrongs committed in the life-time of a deceased person.

I.* An action may be maintained by the executors, administrators or representatives of any person deceased, for any wrong committed in the life-time of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death, and provided such action shall be brought within one year after the death of such person; and the damages, when recovered, shall be part of the personal estate of such person: and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased, for any wrong committed by him in his life-time for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death, and so as such action shall be commenced within two years after the committing of the wrong; and the damages to be recovered in such action shall, if recovered against an executor or administrator, bound to administer according to the English law, be payable in like

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order of administration as the simple contract debts of such person.

Death of either party not to abate suit.

II. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators or representatives of the party deceased. Provided that, in any case in which any such action shall be continued against the executors, administrators or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

Proviso.

A. D. 1855. ACT XIII.

AN ACT *to provide compensation to Families for loss occasioned by the death of a person caused by actionable wrong.*

Passed on the 27th March 1855.

Preamble.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; it is enacted as follows:—

Action for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

I. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime. And it is enacted further, that every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person de-

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ceased; and in every such action the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the court by its judgment or decree shall direct.

Not more than one action to be brought: to be commenced within 12 months.

II.* Provided always that not more than one action or suit shall be brought for, and in respect of the same subject matter of complaint, and that every such action shall be brought within twelve calendar months after the death of such deceased person; provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

Claim for loss to the estate may be added.

Plaintiff shall deliver particulars, &c.

III. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Construction of Act.

IV. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grand-father and grand-mother; and the word "child" shall include son and daughter, and grandson and grand-daughther, and step-son and step-daughter.

* So much of this Section as provides for the limitation of suits repealed by Act IX. of 1871.

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A. D. 1855. ACT XIV.

AN ACT *for the better regulation of Military Bazars in the Presidency of Fort St. George.*

Passed on the 27th March 1855.

WHEREAS it is desirable to extend the provisions of Act XII. of 1842 to persons suing for the recovery of debts before superintendents of police, under the provisions of Regulation VII. of 1832 of the Madras Code; it is enacted as as follows:— Preamble.

I. No person residing within the limits of any military cantonment, or carrying on any trade or business therein, shall be allowed to recover in the court of the officer in charge of the police, under the provisions of Clause 3, Section XXI. of Regulation VII. of 1832 of the Madras Code, any debt contracted in the way of trade, or for the loan of money, within any such cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt shall, at the time of contracting thereof, have been registered as a military bazar-man within any such Cantonment. Debt, &c. not recoverable under Clause 3 of Section XXI of Regulation VII of 1832 of Madras Code, unless person suing have been registered as a Military Bazar-man.

A. D. 1855. ACT XXVI.

AN ACT *to facilitate the payment of small deposits in Government Savings' Banks to the representatives of deceased depositors.*

Passed on the 19*th September* 1855.

WHEREAS it is expedient to facilitate the payment of small sums belonging to the estates of deceased depositors in the savings' banks established by Government within any part of the territories in the possession and under the Government of the East India Company to the representatives of such depositors; it is enacted as follows:— Preamble.

I. If a depositor in any Government savings' bank shall die leaving therein a sum of money not exceeding five hundred rupees, and probate of his will or letters of ad- Secretary of Government Savings' Bank, in certain cases, to pay without probate,

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&c., money belonging to the estate of a deceased depositor.

ministration of his estate or effects, or a certificate granted *under Act XX. of* 1841, *or under Section IV. of Act X. of* 1851, (repealed by Sec. 1, Act XXVII, of 1860,) shall not be produced to the secretary of such bank within the period of two months from the time of the death of the said depositor, it shall be lawful for the Secretary of such Bank to pay the same to any person or persons who shall appear to him to be entitled to receive the same or to administer the effects of the deceased; and such payment shall be a full indemnity and discharge from all further liability in respect of the money so paid; but nothing herein contained shall preclude any executor or administrator or representative of the deceased, from recovering from the person or persons receiving the same, the amount remaining in his or their hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration; and any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the money so paid to such person or persons and remaining in his or their hands unadministered, in the same manner and to the same extent as if such person or persons had obtained letters of administration to the estate of the deceased.

Payment to be a discharge.

Saving of right of executor, &c.

And of creditor.

Security for due administration.

II. The secretary of any such bank may take such security as he shall think necessary from any person or persons to whom he shall pay any money under the preceding section for the due administration and distribution of the money so paid, and may assign the same to any person or persons interested in the due administration and distribution thereof, which person or persons may sue on the same in his or their own names.

Power to administer oath, &c.

Penalty for false testimony.

III. For the purpose of ascertaining the right of the person or persons claiming to be entitled as aforesaid, it shall be lawful for the secretary of any such bank to administer an oath or affirmation; and every person who, having been sworn or having taken a solemn affirmation under this Act, shall wilfully give false testimony upon any examination authorized by this Act, shall be deemed guilty of perjury, and, if convicted, shall be liable to be punished accordingly.

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IV. Repealed by Act XXIV. of 1867.

V.* Nothing in this Act contained shall apply to the payment of any money deposited in a Government savings' bank belonging to the estate of any European officer or soldier dying in Her Majesty's service in India, or of any European officer or soldier dying in the service of the East India Company, or to the estate and effects of any officer, seaman, or other person dying in the marine service of the said company, called the Indian Navy, or to the estate and effects of any person who, at the time of his death, was a deserter from any of the said services.

Act not to apply to money belonging to the estates of European soldiers, sailors, &c.

A. D. 1855. ACT XXVIII.

AN ACT *for the Repeal of the Usury Laws.*

Passed on the 19*th September* 1855.

WHEREAS it is expedient to repeal the laws now in force relating to usury; it is enacted as follows:—

Preamble.

I. Repealed by Act XIV. of 1870.

II. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the court shall deem reasonable.

What rate of interest shall be decreed by the Court in any suit.

III. Whenever a court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the court shall think fit.

Rate of interest upon a judgment or decree.

IV. A mortgage or other contract for the loan of money, by which it is agreed that the use of usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Contract for the usufruct of property, in lieu of interest, to be binding.

*So much of this section as relates to persons dying in the service, or in the marine service of the East India Company, repealed by Act XIV. of 1870.

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What amount of interest to be deposited in certain cases of conditional sales under the Bengal Regulations.

V. Whenever, under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum.

Proviso.

Provided that, in the latter case, the amount deposited shall be subjected to the decision of the court as to the rate at which interest shall be calculated.

Rate of interest on future adjustments of accounts.

VI. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the court shall deem reasonable.

VII., VIII. & Schedule. Repealed by Act XIV. of 1870.

A. D. 1855.* ACT XXXIV.

AN ACT *to explain and amend Act No. XXXIII. of* 1852.

Passed on the 14*th December* 1855.

Preamble.

WHEREAS doubts have arisen whether a court to which application is made to enforce or execute a judgment under the provisions of Act XXXIII. of 1852 has power to inquire into the validity of the judgment; and it is expedient to remove such doubts, and to prevent any such court from inquiring into the validity of a judgment in respect of which it has no appellate jurisdiction, and to provide for a stay of execution when such court thinks it reasonable that the validity of the judgment should be inquired into; it is enacted as follows:—

Court to which application to enforce a judgment of another

I. The court to which application is made to enforce or execute a judgment under the provisions of Act XXXIII

* This Act has been repealed by Act X. of 1861, except so far as it relates to the enforcement of judgments by any court established by Royal Charter.

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of 1852, shall not have power to inquire into the validity of such judgment, unless it appear, upon the face of such judgment, that the court by which the judgment was given had no jurisdiction to pronounce the same.

Court is made, not to inquire into the validity of the judgment. Proviso.

II. The court to which the application is made may, upon reasonable cause being shown, stay the execution of the judgment for a reasonable time, to enable the judgment debtor to apply to the court by which the judgment was given, or to any court having appellate jurisdiction in respect of the judgment or execution thereof, for an order to stay the execution, or for any other order relating to the judgment or the execution thereof, which such court of first instance or court of appeal might have made, if execution had been issued by the court of first instance, or if application for execution had been made to such court; and in case the property or person of the judgment-debtor shall have been seized under an execution, the court which issued the execution may order restitution of the property, or the discharge of the person of the debtor, in the mean time.

Such Court may, in certain cases, stay execution of judgment.

III. Before making an order to stay execution, or for the restitution of property, or the discharge of the judgment-debtor under this Act, the court may require such security from, or impose such conditions upon, the judgment-debtor, as it may deem reasonable.

Court may, in such cases, take security, &c. from judgment-debtor.

IV. Any order of the court in which the judgment was given, or of such court of appeal as aforesaid, shall be binding upon the court to which the application for execution was made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last-mentioned court.

Order of Court pronouncing judgment to be binding upon Court enforcing the same.

V. No discharge of a defendant under the provisions of this Act shall prevent him from being re-taken in execution of the judgment.

Defendant discharged under this Act liable to be re-taken in execution of the judgment.

VI. This Act shall be read with, and taken as part of Act XXXIII. of 1852.

Act to be taken as part of Act XXXIII of 1852.

Decrees of the Court can be executed within the jurisdiction of the Supreme Courts only under the provisions of Act XXXIII. of 1852; and the rules laid down in Act XXIII. of 1840 should be observed in such cases.—*Pro. S. C.* 14*th Feb.* 1861. *Rules of Practice, p.* 25.

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A. D. 1856. ACT IX.

AN ACT *to amend the Law relating to Bills of Lading.*

Passed on the 11*th April* 1856.

Preamble.

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; it is enacted as follows:—

Rights under Bills of Lading to vest in consignee or endorsee.

I. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage *in transitu* or claims for freight.

II. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against Master, &c.

III. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless

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such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board. Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims. Proviso.

A. D. 1856. ACT XV.

AN ACT *to remove all legal obstacles to the Marriage of Hindoo Widows.*

Passed on the 25th July 1856.

WHEREAS it is known that, by the law as administered in the civil courts established in the territories in the possession and under the Government of the East India Company, Hindoo widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindoos believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the courts of justice shall no longer prevent those Hindoos who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences; and whereas it is just to relieve all such Hindoos from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindoo widows will tend to the promotion of good morals and to the public welfare; it is enacted as follows:— Preamble.

I. No marriage contracted between Hindoos shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of Marriage of Hindoo widows legalized.

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such marriage, any custom and any interpretation of Hindoo law to the contrary notwithstanding.

Rights of widow in deceased husband's property to cease on her re-marriage.

II. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her without express permission to remarry, only a limited interest in such property with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

Guardianship of children of deceased husband on the re-marriage of his widow.

III. On the re-marriage of a Hindoo widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment, the court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother. Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Nothing in this Act to render any childless widow capable of inheriting.

IV. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of

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inheriting the whole or any share of such property, if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of rights of widow marrying except as provided in the three preceding sections.

V. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Whatever ceremonies now constitute a valid marriage shall have the same effect on the marriage of a widow.

VI. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindoo female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindoo widow; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements, are inapplicable to the case of a widow.

Consent to re-marriage of a widow who is a minor.

VII. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or failing all these, of her elder brother, or failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this section, shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both. And all marriages made contrary to the provisions of this section may be declared void by a court of law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated. In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

Punishment for abetting marriage made contrary to this section.

Effect of such marriage.

Proviso.

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A. D. 1857. ACT XX.

AN ACT *to amend Act IX. of* 1850.

Passed on the 10*th July* 1857.

Preamble. WHEREAS it is expedient that authority should be given to vary the rate of diet-money to be deposited for the subsistence of persons imprisoned under Act IX. of 1850; it is enacted as follows :—

Government empowered to regulate the rate of diet-money prescribed in Section LXII, Act IX of 1850.

I. Whenever, with reference to the price of provisions in any presidency, the Governor in Council shall be of opinion that the rate of diet-money prescribed in Section LXII of Act IX. of 1850 is insufficient for the subsistence of persons imprisoned under that Act, it shall be lawful for the Governor in Council from time to time to fix such other rate, not exceeding three annas for each day, as may to him seem sufficient.

Court may vary the rate, in case of illness or other special cause.

II. It shall be lawful for a judge of a court of small causes holden under the said Act, in case of illness or for other special cause, to order that the diet-money to be deposited for the subsistence of a prisoner taken in execution under a warrant of the court shall be deposited after such rate, not exceeding six annas for each day, as may to him seem necessary. Every such order may from time to time be revised and altered on due cause being shown.

Construction.

III. This Act shall be read with and taken as a part of Act IX. of 1850.

On the 25th March 1862 Government raised the diet-money to three annas a day in the case of Europeans and East Indians, and two annas a day in the case of Natives.—*Fort St. George Gazette, 8th April* 1862.

A. D. 1858. ACT XIV.

AN ACT *to extend the provisions of Act XXI. of* 1855 *in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards.*

Passed on the 9th April 1858.

Preamble. WHEREAS by Section XX, Regulation V. 1804, and Section III. Regulation X. 1831 of the Madras Code, the zillah

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courts, subject to the confirmation of the Sudder Adawlut, are authorized and required to appoint guardians to the minor heirs of property of every description not subject to the jurisdiction of the Court of Wards, and by Clause 9, Section XXI. of the former Regulation, the guardians are required to provide for the education of their wards in a manner suitable to their rank and condition; and whereas, by Act XXI. of 1855, better provision has been made for the education of minors subject to the superintendence of the Court of Wards, and it is expedient that the same powers which are thereby given to the collectors and Court of Wards in respect of the minors under their superintendence should be exercised by the zillah courts, subject to the control of the Sudder Adawlut in respect of the minors for whom they are required to appoint guardians; it is enacted as follows:—

General superintendence and control of the education of male minor wards vested in Zillah Judges.

I. The general superintendence and control of the education of every male minor, for whom a guardian has been or shall be appointed by the zillah court, is hereby vested in the judge of the zillah court of the district within whose jurisdiction such minor's estate is situate; or, if such minor is possessed of immovable property within the jurisdiction of more than one zillah court, in the judge of such court as the Sudder Adawlut shall direct.

Powers of Zillah Judges.

II. The judge of the zillah court, subject to the control of the Sudder Adawlut, is hereby authorized to exercise in respect of such minor and the guardian of such minor, all the powers and authorities which, by Sections II, III, IV, & V, Act XXI. of 1855, the collector of revenue or the Court of Wards is authorized to exercise in respect of minors and guardians of minors whose property is under the management of the Court of Wards.

The right to the custody of the person of a male minor vested in guardian appointed by the Zillah Judge with the confirmation of Sudder Court.

III. The right to the custody of the person of every male minor, for whom a guardian is appointed by the judge of the zillah court, is hereby vested in the person appointed by the judge of the zillah court, with the confirmation of the Court of Sudder Adawlut, either originally or upon the removal of a former guardian, to be the guardian of such minor.

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Appeal from the orders of a Zillah Judge to lie to Sudder Court.

IV. All orders and proceedings of a judge of a zillah court under the provisions of this Act shall be subject to the revision of the Court of Sudder Adawlut, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Court of Sudder Adawlut.

A. D. 1858. ACT XXXII.

AN ACT *for bringing the Fort of Tanjore and the adjacent Territory under the Laws of the Presidency of Fort St. George.*

Passed on the 24th August 1858.

Preamble.

WHEREAS it is expedient to bring the Fort of Tanjore and the adjacent territory, which have lapsed to the East India Company in consequence of the death of the Rajah of Tanjore, under the general laws of the Presidency of Fort St. George, and to make provision for the trial and determination of suits, appeals, and proceedings pending in any of the courts established by the said Rajah; it is enacted as follows:—

Fort of Tanjore and adjacent territory placed under the general laws of the Madras Presidency.

I. From and after the day when this Act shall come into operation, the Fort of Tanjore and adjacent territory shall be subject to the general laws which are or shall be in force within the territories subject to the Presidency of Fort St. George.

II. to VIII. Repealed by Act VIII. of 1868.

A. D. 1858. ACT XXXIV.

Preamble.

AN ACT *to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter.*

Passed on the 14th September 1858.

WHEREAS the several courts of judicature established by Royal Charter within the British territories in India, are

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authorized and empowered by their respective charters to appoint guardians and keepers of the persons and estates of lunatics, and to enquire into, hear, and determine questions of alleged lunacy by inspection of the person, or by such other ways and means by which the truth may best be discovered and known; and whereas, according to the practice of said courts, questions of alleged lunacy are determined by inquisition taken before a jury, and it is expedient to lessen the cost and to alter the mode of enquiry into such questions, and also to empower the said courts to make provision for the due management of the estates of lunatics; it is enacted as follows:—

Court may order enquiry as to persons alleged to be insane.

I. It shall be lawful for any of the said courts of judicature, on such application as is hereinafter mentioned, to make an order directing an enquiry whether any person (subject to the jurisdiction of the court), who is alleged to be lunatic, is or is not of unsound mind and incapable of managing himself and his affairs. The order may also contain directions for other enquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives or next of kin, the time during which he has been of unsound mind, or such other matters as to the court shall seem proper.

Order for enquiry, what to contain.

Application by whom to be made.

II. Application for such enquiry may be made by any persons related by blood or marriage to the alleged lunatic, or by the Advocate General.

Enquiry to be by the Court.

III. The order made by the court upon such application shall direct the enquiry to be by the court itself. It shall nevertheless be lawful for the court, if it see sufficient cause for so doing, to direct the enquiry to be executed in chambers before a single judge of the court. Reasonable notice of the time and place appointed for the enquiry shall be given to the alleged lunatic. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the court may direct such substituted service of the notice as it shall think proper. The court may also, if it think fit, direct a copy of such notice to be served upon any person related by blood or marriage to

Court may direct enquiry by a single Judge.

Notice of enquiry to be given to Lunatic.

Service of notice.

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Lunatic may demand enquiry before full Court.

the alleged lunatic. If the enquiry be directed to be executed before a single judge, it shall be lawful for the alleged lunatic, at any time before the day fixed for the enquiry, to demand an enquiry before the full court. In such case, the enquiry shall be by the court, and a further day shall be appointed for making such enquiry; and in such case the court may direct such further notices (if any) to be given, as it may think requisite.

Court may, at any time after the application, require attendance of Lunatic for the purpose of being personally examined.

IV. The court may, at any time after the application, require the alleged lunatic to attend at such convenient time and place, within twenty miles of the place of residence of the said lunatic, as it may appoint, for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of the mental capacity and condition of such alleged lunatic.

And may authorize persons to have access to the Lunatic for the purpose of examination.

V. The court may likewise, at any time after the application for such enquiry, make an order authorizing any person or persons, to be therein named, to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination where the alleged Lunatic is a woman of rank.

VI. The attendance and examination of the alleged lunatic under the provisions of the two last preceding sections, shall, if the alleged lunatic be a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Powers of Judge executing the enquiry.

VII. If the enquiry is made by a judge of the court, the judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last preceding section) personally to examine the alleged lunatic and take such evidence, on oath or otherwise, and call for such information as he may think fit or the said court may direct in order to ascertain whether the alleged lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a judge or master of the said court for the investigation of matters referred to them by the court. The judge shall report to the court the result of the enquiry.

Court may in certain cases direct enquiry to be made before

VIII. If the alleged lunatic be not within the local limits of the jurisdiction of the court, and the enquiry cannot con-

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veniently be made in either of the modes hereinbefore provided, the court may direct the enquiry to be made before any principal court of original jurisdiction in civil cases within whose local jurisdiction the alleged lunatic may be, and such last mentioned court shall accordingly proceed to make such enquiry in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of enquiry to the court directing the enquiry. The evidence taken upon the enquiry shall be recorded by the court in the English language in the form of a narrative; and a copy thereof, certified by the court, shall be transmitted, together with any remarks the court may think fit to make thereon, to the court by which the enquiry was directed.

any principal Civil Court of original jurisdiction within whose local jurisdiction the alleged Lunatic may be.

IX. If the report of the judge or the finding of a court under the last preceding section appear to the court directing the enquiry to be defective or insufficient in point of form, it shall be lawful for such last mentioned court either to amend the same, or to refer it back to the judge or the court which made the enquiry to be amended.

If report of Judge or finding of Court appear defective or insufficient in form, it may be amended.

X. It shall be lawful for the court, on the application of the person at whose instance the order directing an enquiry was made, or on the application of the alleged lunatic or of any of his relatives authorized by court to make the application, to direct a new trial of the matters of enquiry according to the usual course and practice of the court in directing new trials in civil cases. If such application be granted in a case tried by a single judge, the order granting the same shall direct the enquiry to be made by the full court. If the application be granted in a case tried under Section VIII, the court directing the new trial may give such directions regarding the same as it shall see fit.

Court may direct new trial.

XI. The court shall make such order as may appear just respecting the costs of any enquiry under this Act, and may include therein such remuneration to physicians and surgeons as the court, having regard to the nature of the enquiry, shall deem reasonable.

Costs of enquiry.

XII. If no new trial be directed, the finding of the court to which the application for enquiry was made, if the enquiry have been made by such court, or the report of the judge or

Finding of Court or report by Judge to be proceeded on, in regard to appointment

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of committees, as an inquisition.

the finding of the court to which the enquiry may have been referred under the provisions of Section VIII, as the case may be, shall be of the same force and effect, and be proceeded on in the same manner in regard to the appointment of committees of the person and estate of the lunatic, as the inquisition now according to practice taken upon the oath of a jury.

On appointment of committee, the Court may give certain powers for management of Lunatic's estates.

XIII. It shall be lawful for the court, on the appointment of committees of the person and estate of a lunatic, to direct by the order of appointment, or by any subsequent order, that the person to whom the charge of the estate is committed, shall have such powers for the management thereof as to the court shall seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist. But such powers shall not extend to the sale or charge by way of mortgage of the estate or any part thereof, or to the letting of any immovable property unless for a term not exceeding three years.

Master to receive proposals concerning management, sale, &c. of estate.

XIV. The master of the court shall be at liberty, without an order of reference, to receive any proposal and conduct any enquiry respecting the management of the estate of a lunatic, if such proposal relate to any matter which the committee of the estate has not been empowered by an order under the last preceding section to dispose of. The master may likewise, without reference, receive and enquire into any proposal relating to the sale or charge by way of mortgage of the estate or of any part thereof, or to the letting of any immovable property for a term exceeding three years.

Court to make order upon the report of the Master.

XV. The master shall report to the court on the proposal; and the court shall, subject to the provisions of this Act, make such order upon the report and respecting the costs, as shall, under the circumstances, seem just.

Master to determine what persons to attend at any enquiry, at the cost of the estate.

XVI. The court or the master shall once in the matter of each lunacy, and may afterwards from time to time, determine whether any one or more and (if any) how many and which of the relatives or next of kin shall attend before the master, at the cost of the estate, in any proceeding connected

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with the management thereof; and, if any such relative or next of kin is an infant, may from time to time appoint a fit person to be his guardian for the purposes of the lunacy. Appointment of guardian of infant relative.

XVII. The court may, on application made to it by petition concerning any matter whatsoever connected with the lunacy, make such order, subject to the provisions of this Act, respecting the application and the costs thereof, and of the consequent proceedings, as shall, under the circumstances, seem just. Application to Court in the first instance.

XVIII. The court may, if it appears to be just, or for the lunatic's benefit, order that any property, movable or immovable, of the lunatic, and whether in possession, reversion, remainder, contingency, or expectancy, be sold or charged by way of mortgage or otherwise disposed of, as may seem most expedient for the purpose of raising money to be applied for any of the following purposes:— Lunatic's property may be sold for debts, maintenance, &c.

1. The payment of the lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit.

2. The discharge of any incumbrance on his estate.

3. The payment of or provision for the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto.

4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order or under the authority of the court.

XIX. The committee of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the court shall order. In like manner such committee shall, under the order of the court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian. Committee to execute conveyances. To execute powers.

XX. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards Court may order performance of contract.

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becomes lunatic, the court may, if the contract is such as the court thinks ought to be performed, direct the committee of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

Member of partnership becoming Lunatic.

XXI. If a member of a partnership firm be found lunatic, the court may, on the application of the other partners, or any person who appears to the court to be entitled to require the same, dissolve the partnership; and thereupon or upon a dissolution by decree of court or otherwise by due course of law, the committee of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the court shall think proper.

Disposal of business premises.

XXII. When a lunatic has been engaged in business, the court may, if it appear to be for the lunatic's benefit that the business premises should be disposed of, order the committee of the estate to sell and dispose of the same; and the monies arising from such sale shall be applied in such manner as the court shall direct.

Committee may dispose of lease.

XXIII. Where a lunatic is entitled to a lease or underlease, and it appears to be for the benefit of his estate that it should be disposed of, the committee of the estate may, by order of the court, surrender, assign, or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms as the court shall think fit.

When Court of Wards may assume charge of land belonging to a Lunatic.

XXIV. If a lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the court, which, by the law in force in the presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the said Court of Wards may assume the charge of such landed property and manage the same according to the rules for the time being in force for such management. Provided that in such case no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any collector to appoint a guardian of the

Proviso.

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person of the said lunatic or a manager of the estate, except of the landed property which so subjects the proprietor as aforesaid. Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise. Provided further that nothing contained in this section shall affect the powers given to the Supreme Court by Sections XVIII, XIX. and XX. of this Act, or (except so far as relates to the management of the said landed property, which so subjects the proprietor as aforesaid) the powers given by any other section of this Act.

Surplus income of the land, after payment of Government revenue, &c., to be disposed of as the Supreme Court shall direct.

Provisions of this section, not to affect certain powers given to the Supreme Court by the Act.

XXV. Where any stock or Government securities or any share in a company (transferable within the said territories, or the dividends of which are payable there) is standing in the name of, or is vested in a lunatic beneficially entitled thereto, or in a committee of the estate of a lunatic, or in a trustee for him, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the court, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, securities, or shares, or to receive and pay the dividends to a new committee, or as he directs within fourteen days after being required by him to do so, then the court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the court may direct; and such transfer or payment shall be valid and effectual for all purposes.

Stock transferable in India belonging to Lunatic, may be ordered to be transferred.

XXVI. Where any such stock or Government securities or share in a company is standing in the name of, or vested in any person residing out of the said territories, and not in any part of the United Kingdom, the court, upon being satisfied that such person has been declared of unsound mind, and that his personal estate has been vested in a curator or manager, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock, securities, or shares, or of any part thereof, to such curator or manager or otherwise, and also to receive

Stock of Lunatic residing out of India, and not within the United Kingdom, may be ordered to be transferred.

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and pay over the dividends and proceeds, as the court may think fit; and any act done in pursuance of such order shall be valid and effectual for all purposes.

Court may in certain cases apply property for Lunatic's maintenance without appointing committee.

XXVII. If it appears to the court, having regard to the situation and condition in life of the lunatic and his family, and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a committee of the estate, order that the property (if money), or (if of any other description) the produce thereof, when realized, be paid to such person as the court may think fit, to be applied for the purpose aforesaid; and all payments so made shall be a good discharge to the person making the same.

Like power in case of temporary lunacy.

XXVIII. If it appears to the court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of his family, the court may, in like manner as under the last preceding section, direct his property, or a sufficient part of it, to be applied for the purpose aforesaid.

Superseding proceedings in lunacy.

XXIX. When any person has been found of unsound mind, and it shall be shown to the court, either on the application of such person or of any other person acting on his behalf, or on the information of any other person, that there is reason to believe that such unsoundness of mind has ceased, the court may make an order for enquiry whether such person is or is not still of unsound mind and incapable of managing himself and his affairs. The enquiry shall be conducted in the same manner and subject to the same rules as are hereinbefore prescribed for an enquiry into the unsoundness of mind of an alleged lunatic; and if it be found that the unsoundness of mind has ceased, the court shall order all proceedings in the matter of the lunacy to cease or to be set aside, on such term and conditions as under the circumtances of the case shall appear proper.

Power of Court to general orders.

XXX. The court may, from time to time, make such orders, not inconsistent with the provisions of this Act, as

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shall seem meet for carrying into effect the purposes of this Act, and for regulating the mode of proceeding before the court, or before a judge of the court, or the master, in matters of lunacy.

Powers of Master to be exercised by a Judge or Recorder.

XXXI. Every power given by this Act to the master of any of the said courts, may also be exercised by a judge of any of the said courts, and shall, in the courts of judicature of Prince of Wales' Island, Singapore, and Malacca, be exercised by the recorder of the said court or of any division thereof.

Interpretation. "Lunatic." Number. Gender.

XXXII. Unless the contrary appears from the context, the word "lunatic," as used in this Act, shall mean any person found by due course of law to be of unsound mind, and incapable of managing his affairs. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females.

A. D. 1858. ACT XXXV.

AN ACT *to make better provision for the care of the estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.*

Passed on the 14*th September* 1858.

Preamble.

WHEREAS it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature, and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained; it is enacted as follows:—

I. Repealed by Act XIV. of 1870.

Civil Court on application may institute enquiry when a person possessed of property is alleged to be a Lunatic.

II. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the civil court, within whose jurisdiction such person is residing, may, upon such application as is hereinafter mentioned, institute an enquiry for the purpose

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of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application by whom to be made.

III. Application for such enquiry may be made by any relative of the alleged lunatic or by any public curator appointed under Act XIX. of 1841, or by the Government pleader, or, if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the collector of the district in which it is situate. If the property or any part thereof be of such a description as by the law in force in any presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the collector on behalf of the Court of Wards

Notice of enquiry to be given to Lunatic.

IV. When the civil court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would

Service of notice.

be ineffectual, the court may direct such substituted service of the notice as it shall think proper. The court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

Court may require attendance of, and may authorize persons to have access to Lunatic for the purpose of examination.

V. The civil court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of the mental capacity and condition of such alleged lunatic. The court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination where the alleged Lunatic is a woman of rank.

VI. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be a woman who according to the manners and customs of the country ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Appointment of Assessors.

VII. The civil court, if it think fit, may appoint two or more persons to act as assessors to the court in the said

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enquiry. Upon the completion of the enquiry, the court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper. Order of Court.

VIII. If the alleged lunatic reside at a distance of more than fifty miles from the place where the civil court to which the application shall have been made is held, the said court may issue a commission to any subordinate court to make the enquiry, and thereupon the said subordinate court shall conduct the enquiry in the manner hereinbefore provided. On the completion of the enquiry, the subordinate court shall report its proceedings, with the opinions of assessors if assessors have been appointed, and its own opinion on the case; and thereupon the civil court shall make such order in the case as it may think proper. Issue of the commission to a subordinate Court. Report of subordinate court. Order of Civil Court.

IX. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which by the law in force in any presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the civil court shall appoint a manager of the estate. Any near relative of the lunatic or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager. Management of Lunatic's estate if consisting of property subject to Court of Wards. In all other cases.

X. Whenever a manager of the estate of a lunatic is appointed by the civil court, the court shall appoint a fit person to be guardian of the person of the lunatic. The manager, if he be the public curator, may be appointed guardian. Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person. Appointment of guardian by Civil Court.

XI. If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the civil court, instead of appointing a manager, may direct the collector to take charge of the estate, Management of Lunatic's estate if consisting of land not subject to Court of Wards.

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Proceedings of Collector subject to control of superior Revenue Authorities.

and thereupon the collector shall appoint a manager of the property and a guardian of the person of the lunatic. All the proceedings of the collector in the charge of estates under this Act shall be subject to the control of the superior revenue authorities.

Remuneration of managers and guardians.

XII. If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the court or the collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable.

Duties of guardians.

XIII. The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the court or the collector, as the case may be, for the maintenance of the lunatic and of his family.

Powers of managers.

XIV. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the civil court previously obtained.

Managers to furnish inventory and annual accounts.

XV. Every person appointed by the civil court or by the collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in court or to the collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the court or to the collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate

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and the balance remaining in his hands. If any relative of the lunatic, or any public officer, by petition to the court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the court may summon the manager and enquire summarily into the matter, and make such order thereon as it shall think proper; or the court, at its discretion, may refer any such petition to any subordinate court, or to the collector if the manager was appointed by the collector.

Proceeding if accuracy of inventory or accounts be impugned.

XVI. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

Manager to pay proceeds of estates into the Public Treasury.

XVII. It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Relative may sue for an account.

XVIII. The civil court, for any sufficient cause, may remove any manager appointed by the court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all monies received or disbursed by him. The court may also, for any sufficient cause, remove any guardian appointed by the court. In like manner the collector, for any sufficient cause, may remove any manager or guardian appointed by the collector; and the court, on the application of the collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

Removal of manager or guardian.

XIX. The civil court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the court, and may realize such fine by attach-

A manager refusing to furnish accounts, may be fined by the Court, &c.

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ment and sale of his property under the rules in force for the execution of decrees of court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

Judge may in certain cases apply property for Lunatic's maintenance without appointing any manager.

XX. If it appears to the civil court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as herein before provided, the court may, instead of appointing such manager, order that the property (if money), or (if of any other description) the produce thereof when realized, be paid to such person as the court may think fit, to be applied for the maintenance of the lunatic and his family.

Procedure for delivery of estate to a person who has ceased to be of unsound mind.

XXI. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person, or any other person acting on his behalf or having or claiming any interest in respect of his estate, shall represent by petition to the civil court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The enquiry shall be conducted in the manner provided in Section IV. and the four following sections of this Act; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final.

Orders to be open to appeal.

XXII. Except as otherwise herein provided, all orders made by a civil court or by any subordinate court under this Act, shall be open to appeal under the rules in force for appeals in miscellaneous cases.

Interpretation.

"Lunatic."

"Civil Court."

Gender.

XXIII. The word "lunatic" as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "civil court" shall mean the principal court of original jurisdiction in the district. Words importing the masculine gender shall include females.

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A. D. 1858. ACT XXXVII.

AN ACT *to continue certain Privileges and Immunities to the Family and Retainers of His late Highness the Nabob of the Carnatic.*

Passed on the 5th October 1858.

Preamble.

WHEREAS the exemption from the jurisdiction of the civil and criminal courts, enjoyed by the said late Nabob, his family, and servants, by virtue of the provisions of Act I. of 1844, ceased at the death of the said late Nabob; and it is deemed expedient that some of the said persons should continue to be privileged, and that the privilege enjoyed by others should be continued as respects all acts done by them prior to the commencement of this Act; it is enacted as follows:—

No action to be commenced or prosecuted, and no process to issue against any of the members of the family of the late Nabob mentioned in Schedule A, unless with the consent of the Governor in Council.

I. No action shall be commenced or prosecuted, and no writ or process shall at any time be sued forth against the person, goods, or property of any of the members of the family of the late Nabob, whose names are entered in Schedule A attached to this Act, unless such action shall be commenced, or such writ or process shall be sued forth with the consent of the Governor in Council of Fort St. George first had and obtained, such consent to be certified by the signature of one of the secretaries to Government; and any action which shall at any time be commenced, and any writ or process which shall at any time be sued forth, against the person, goods, or property of any such person as aforesaid, without such consent as aforesaid, so certified as aforesaid, shall be utterly null and void.

Nor against any of the members of his family, or any of his retainers mentioned in Schedules B and C, without a like consent.

II. No action shall be commenced or prosecuted, and no writ or process shall be sued forth against the person, goods, or property of any of the members of the family or of the retainers of the late Nabob, who were protected from the process of the civil and criminal courts by Act I. of 1844, and whose names are entered in Schedules B and C annexed to this Act, on account of any contract which shall have been entered into, or cause of action which shall have accrued, at a time preceding the commencement of this Act,

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unless such action shall be commenced, or such writ or process shall be sued forth, with the consent of the Governor in Council of Fort St. George first had and obtained, such consent to be certified by the signature of one of the secretaries to Government; and any action which shall at any time be commenced, and any writ or process which shall at any time be sued forth, in respect of any such contract or cause of action, against the person, goods, or property of any such person as aforesaid, without such consent as aforesaid, so certified as aforesaid, shall be utterly null and avoid.

Commencement of Act.

III. This Act shall commence and take effect from the expiration of Act XXIV. of 1858.

SCHEDULE A.

Prince Azeem Jah, Ameer Ool Oomrah, Oomdut Ool Moolk, Ussud Ood Dowlah, Mohummud Ally Khan Bahadoor, Zoolfakhar Jung.

Nabob Khyroom Nissa Begum.
Auzum Oon Nissa Begum.
Shurf Oon Nissa Begum.
Fukhr Oon Nissa Begum.
Fazeelut Oon Nissa Begum.
Fatimah Begum.
Koolsoom Begum.
Ahmudy Begum.
Mookhtar Oon Nissa Begum.
Nabob Khaderiah Begum.
Nabob Ghousiah Begum.
Moomtauz Oon Nissa Begum.
Umutool Walee Valeyut Oon Nissa Begum.
Umtolah Hammeedut Oon Nissa Begum.
Raheem Oon Nissa Begum.
Hamed Oon Nissa Begum.
Umutool Ali Ulyut Oon Nissa Begum.
Umutool Azeem Monazzaz Oon Nissa Begum.
Umutool Azeez Monazzaz Oon Nissa Begum.
Umutool Humeed Humeed Oon Nissa Begum.

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SCHEDULE B.

Bauker Hoossain, styled Bauker Hoossain Khan Bahadoor.

Gholam Mohummud Hoossain, styled Rusheed Ood Doolah, Gholam Mohummud Khan Bahadoor, Iyalut Jung.

Gholam Mohummud, styled Mooneer Ood Dowlah, Gholam Mohummud Khan Bahahoor, Jassarut Jung.

Gholam Russool, styled Etebar Ood Dowlah, Gholam Russool Khan Bahadoor, Ukbar Yar Jung.

Ahmud Oollah, styled Moontuzim Ood Dowlah, Ahmud Oollah Khan Bahadoor, Nubbee Yar Jung.

Noor Oollah Meyan, styled Oomdut Ood Dowlah, Mahommud Noor Oollah Khan Bahadoor, Joorut Jung.

Gholam Mohi Ood Deen, styled Mowzaz Ood Dowlah, Mohi Ood Deen Yar Khan Bahadoor, Hummyut Jung.

Mohummud Buddee Oollah, styled Zaheer Ood Dowlah, Mohummud Buddee Oollah Khan Bahadoor, Fitrut Jung.

SCHEDULE C.

Mouluwee Abdool Wahaub, styled Madaar Ool Omrah Moodubbir Ool Moolk, Mookhtar Ood Dowlah, Wuzarut Khan Bahadoor, Urnsthoo Jung.

Mohummud Nukhy, styled Bukshee Ool Moolk, Bukshee Ood Dowlah, Meer Uskur Khan Bahadoor, Salar Jung.

Mouluwee Mohummud Oollah, styled Cauzee Ool Moolk, Moonsiff Ood Dowlah, Dandrus Khan Bahadoor, Moostuid Jung.

Gholam Ghouse, Mohtamid Ood Dowlah Meer Samaun Khan Bahadoor, Moontuzim Jung.

Mahmood Ally, styled Dubbeer Ool Moolk, Moosheer Ood Dowlah, Rauzdar Khan Bahadoor, Moojuwwiz Jung.

Mouluwee Gholam Ally, styled Moonshee Ool Moolk Dubber Ood Dowlah, Etimaud Khan Bahadoor, Ootarid Jung.

Hajee Khader Moortusa Hoossain, styled Salar Ool Moolk, Mohtashim Ood Dowlah, Meer Atush Khan Bahadoor, Mohtashim Jung.

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A. D. 1859. ACT III.

AN ACT *for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those Officers Registers of Deeds.*

Passed on the 7th February 1859.

Preamble.

WHEREAS it is expedient that cantonment joint magistrates should be invested with civil jurisdiction in certain cases within the local limits of their criminal jurisdiction, and that they should also be appointed registers of deeds within the same limits; it is enacted as follows:—

Executive Government may invest Cantonment Joint Magistrates with civil jurisdiction in certain cases.

I. It shall be competent to the Governor General in Council, and to the Executive Government of any presidency or place, to invest the joint magistrate of any military cantonment bazaar or station, within the limits of their respective governments, with civil jurisdiction. Every joint magistrate so invested shall have power to hear and determine actions of debt and other personal actions in which the value in question shall not exceed the sum of two hundred rupees, and which shall not involve any dispute of caste or any right of real property, against any person who at the time when the cause of action arose and at the time of the institution of the suit, shall have been or shall be subject to the Articles of War for the Native Army, or residing or carrying on trade or business within the limits of such military cantonment bazaar or station, and not subject to any Articles of War made by Her Majesty.

Part of Act XI of 1841 suspended in cantonments where Joint Magistrates are so invested with civil jurisdiction.

II. Whenever the joint magistrate of any military cantonment bazaar or station, shall be invested with civil jurisdiction under the provisions of the preceding sections, and so long as he shall remain so invested, so much of Act XI. of 1841 as authorizes the commanding officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions as aforesaid, shall be suspended within the limits of such cantonment bazar or station.

Also the rules in force in the Madras

III. Whenever in either of the presidencies of Madras or Bombay, an officer shall be invested with civil jurisdic-

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tion as aforesaid, and so long as he shall remain so invested, the rules for the trial of small suits in military bazars at cantonments and stations occupied by the troops of those presidencies respectively, shall cease to have effect within the jurisdiction of such officer.

and Bombay Presidencies for the trial of small suits in military bazars.

IV. Whenever the joint magistrate of any military cantonment bazar or station, shall be invested with civil jurisdiction under the provisions of this Act, no person amenable to the Articles of War for the Native Army, who may be liable to be sued before such joint magistrate for any cause of action cognizable by him, shall be sued elsewhere.

Persons amenable to the Articles of War for the Native Army, to be sued before Cantonment Joint Magistrates invested with civil jurisdiction, and not elsewhere.

V. Provided that nothing in the preceding sections shall be held to alter or affect the rules in force in the Madras presidency for the trial by punchayet of suits against military persons belonging to that presidency.

Saving of rules in force in the Madras Presidency for the trial by punchayet of suits against military persons.

VI. No person carrying on trade or business within the limits of any military cantonment, or who shall have carried on trade or business within any such limits, shall be allowed to recover in any court held under this Act, any debt contracted in the way of such trade or business, or the loan of money within any such cantonment, by any person subject to the jurisdiction of such court, unless the person seeking to recover the debt shall, at the time of contracting the same, have been registered as a military bazar-man within such cantonment.

Trader not to recover any debt unless registered as a military bazarman.

VII. In cases instituted under the provisions of this Act, the plaintiff shall perfer his claim in writing to the court of the joint magistrate having jurisdiction over the same, and if the defendant be a native officer or soldier or a mustered camp follower, the summons to appear and answer to the claim shall be transmitted, for the purpose of being served on the defendant, to the commanding officer of the corps or detachment to which such defendant may belong; and the commanding officer shall return the summons to the joint magistrate, with the acknowledgment of the defendant endorsed thereon; or if the summons cannot be served, the reason of the non-service shall be stated. In other respects, the rules of procedure and all other rules

Procedure in cases tried under this Act.

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contained in Act XI. of 1841 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*) shall be applicable to such cases, and to the execution of the decrees passed therein, so far as the same are applicable: provided that the decisions of the joint magistrate in cases cognizable by him under this Act shall not be open to revision or appeal: and provided further that it shall not be necessary to publish in station orders the decrees passed in such cases before they are carried into execution, and the joint magistrate passing the decree shall determine whether the execution shall be general or special, and shall proceed of his own authority with the execution.

No revision or appeal.

Execution of decrees.

Compensation may be awarded to a defendant if suit be groundless and instituted without probable cause.

VIII. If the claim of the plaintiff be dismissed, and it shall appear to the joint magistrate that the suit was groundless, and that there was no probable cause for instituting the same, it shall be competent to such joint magistrate to award against the plaintiff in favor of the defendant, such sum as he may consider a reasonable compensation to the defendant for the loss of time and expense to which he may have been subjected by the institution of the suit against him, and to proceed to recover the amount so award under the rules applicable to execution of decrees passed under this Act.

IX. & X. Repealed by Act XVI. of 1864.

Oaths of office.

XI.* Every joint magistrate who shall be invested with civil jurisdiction, or who shall be appointed register of deeds under the provisions of this Act, shall, previously to entering upon the performance of his duties, make and subscribe before the chief civil officer, or, where there may be no civil officer, before the chief military officer of the district or zillah in which such cantonment bazar or station is situate, the oaths required by law to be made and subscribed by civil judges and registers of deeds respectively, or the declarations substituted for such oaths.

* So much of this section as mentions "Registers of Deeds," repealed by Act XIV. of 1870.

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A. D. 1859. ACT VIII.*

AN ACT *for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*

Passed on the 22nd March 1859.

WHEREAS it is expedient to simplify the procedure of the courts of civil judicature not established by Royal Charter; it is enacted as follows:— Preamble.

CHAPTER I.

OF THE JURISDICTION OF THE CIVIL COURTS.

I. The civil courts shall take cognizance of all suits of a civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any regulation of the Codes of Bengal, Madras and Bombay respectively, or by any Act of the Governor General of India in Council. Civil Courts have cognizance of all suits unless specially barred.

II. The civil courts shall not take cognizance of any suit brought on a cause of action which shall have been heard and determined by a court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim. Unless suits previously heard and determined.

III. The judgments of the civil courts shall not be subject to revision, otherwise than by those courts under the rules contained in this Act applicable to reviews of judgment, and by the constituted courts of appellate jurisdiction. Revision of judgments of the Civil Courts.

IV. No person whatever shall, by reason of place or birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the civil courts. No person excepted from jurisdiction by reason of place of birth or of descent.

V. Subject to such pecuniary or other limitations as are or shall be prescribed by any law for the time being in force, the civil courts of each grade shall receive, try and determine all suits hereby declared to be cognizable by those courts, if in the case of suits for land or other immovable property such land or property shall be situate Jurisdiction of Civil Courts.

* Act XXIII. of 1861 is to be read and taken as part of this Act.

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within the limits to which their respective jurisdictions may extend, and in all other cases if the cause of action shall have arisen, or the defendant at the time of commencement of the suit shall dwell, or personally work for gain, within such limits.

Suit in which court to be instituted. Transfer of suits.

VI. Every suit shall be instituted in the court of the lowest grade competent to try it. But it shall be lawful for the district court to withdraw any suit instituted in any court subordinate to such district court, and to try such suit itself, or to refer it for trial to any other court subordinate to its authority and competent in respect of the value of the suit to try the same, whenever it may see sufficient cause for so doing. In like manner, the sudder court may order that the cognizance of any suit or appeal which may be instituted in any court subordinate to such sudder court shall be transferred to any other court subordinate to its authority and competent in respect of the value of the suit or appeal to try the same.

Suit to include the whole claim.

VII. Every suit shall include the whole of the claim arising out of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

Relinquishment of part of claim.

If a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted, shall not afterwards be entertained.

Joinder of causes of action in the same suits.

VIII. Causes of action by and against the same parties, and cognizable by the same court, may be joined in the same suit, provided the entire claim in respect of the amount or value of the property in suit do not exceed the jurisdiction of such court.

Court may in certain cases order separate trials of such causes of action.

IX. If two or more causes of action be joined in one suit, and the court shall be of opinion that they cannot conveniently be tried together, the court may order separate trials of such causes of action to be held.

Claim for recovery of land and for mesne profits to be deemed distinct causes of action.

X. A claim for the recovery of land and a claim for mesne profits of such land shall be deemed to be distinct causes of action within the meaning of the two last preceding sections.

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XI. If the suit be for land or other immovable property situate within the limits of a single district, but within the jurisdiction of different courts, the suit may be brought in the court within the jurisdiction of which any portion of such land or other immovable property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such court; but in such case the court in which the suit is brought shall apply to the district court for authority to proceed with the same.

Suits for immovable property situate within different jurisdictions of the same district.

XII. In like manner, if the property be situate within the limits of different districts, the suit may be brought in any court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other immovable property in suit is situate, but in such cases the court in which the suit is brought shall apply to the sudder court for authority to proceed with the same; if the suit is brought in any court subordinate to a district court, the application shall be submitted through the district court to which such court is subordinate.

Suit for immovable property situate in different districts.

XIII. If the districts within the limits of which the property is situate, are subject to different sudder courts, the application shall be submitted to the sudder court to which the district in which the suit is brought is subject; and the sudder court to which such application is made, may, with the concurrence of the sudder court to which the other district is subject, give authority to proceed with the same.

Suits for immovable property situate in districts subject to different Sudder Courts.

XIV. If in a suit for land situate on the borders of the court's local jurisdiction, the defendant object to the hearing of the suit on the ground that the land is not included within the local jurisdiction of the court, the court shall have power to determine the point; and if the court shall find that the land is included within its local jurisdiction, it shall proceed to try the suit. Provided that, if it be shown that the land in dispute has been adjudged by competent authority to belong to an estate, village, or other known division of land situate within the local jurisdiction of another court, the court in which the suit is brought shall reject the plaint, or return it to the plaintiff in order to its being presented in the proper court.

Suit for land situate on the borders of the court's local jurisdiction and alleged by the defendant to be within another local jurisdiction.

Proviso.

XV. No suit shall be open to objection on the ground

Declaratory suit.

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that a merely declaratory decree or order is sought thereby, and it shall be lawful for the civil courts to make binding declarations of right without granting consequential relief.

CHAPTER II.

PRELIMINARY RULES.

Parties may appear in person or by recognized agent or by pleader.

XVI. All applications to any civil court, and all appearances of parties in any civil court, except when otherwise specially provided by this Act, shall be made by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.

Recognized agents.

XVII. The recognized agents of parties by whom such applications and appearances may be made are:—

Persons holding powers of attorney.

1st.—Persons holding general powers of attorney from parties not within the jurisdiction of the court, authorizing them to make such applications and appearances on behalf of such parties.

Persons carrying on trade or business for absent persons.

2dly.—Persons carrying on trade or business for and in the name of parties not within the jurisdiction of the court in matters connected with such trade or business only, where no other agent is expressly authorized to make such applications or appearances.

Persons authorized to act for Government.

3rdly.—Persons being ex-officio or otherwise authorized to act for Government in respect of any suit or judicial proceeding.

Persons specially appointed to prosecute a suit for any sovereign prince.

4thly.—Persons specially appointed by order of Government, at the request of any sovereign prince, or independent chief, whether residing within or without the British territories, to prosecute or defend a suit on his behalf.

Acts required to be done by a party to a suit in person may be done by his recognized agent.

Whenever the personal appearance of a party to a suit is required by this Act, such appearance may be made by his recognized agent, unless the court shall otherwise direct; and anything which by this Act is required or permitted to be done by a party in person may be done by his recognized agent.

Services of notices, &c., on recognized agents.

Notices given to or processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served

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on the party in person, unless the court shall otherwise direct; and all the provisions of this Act relative to the service of notices or processes on a party to a suit shall be applicable to the service of notices and processes on such recognized agent.

Appointment of pleader.

XVIII. The appointment of a pleader to make any such application or appearance as aforesaid shall be in writing and shall be filed in the court. When so filed, it shall be considered to be in full force until revoked by a writing filed in the court. All notices given to, or processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the court shall otherwise direct.

Services of notice on pleader.

Officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them.

XIX. When an officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any member of his family or any other person to commence, conduct, and manage the suit or the defence, as the case may be, in his stead. The authority shall be in writing, and shall be signed by the officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed in the court. When so filed, the countersignature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

The person so authorized may appear personally or appoint pleader.

XX. Any person who may be authorized as in the last preceding section mentioned, by an officer or soldier, to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader of the court to prosecute or defend the suit on behalf

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of such officer or soldier, and all notices or processes relative to the suit which may be served upon any person who shall be so authorized as aforesaid by an officer or soldier, or upon any pleader who shall be appointed as aforesaid by such person to act for or on behalf of such officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

Exemption of certain women from personal appearance.

XXI. Women who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in court.

Government may exempt certain persons from personal appearance.

XXII. The Government may at its discretion exempt from personal appearance in court any person whose rank in the opinion of the Government entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the principal civil court of each district shall, from time to time, be forwarded to such court by the local Government, and a list of such persons (if any) shall be kept in such court, and in the several subordinate courts of the district.

XXIII. Repealed by Sec. I. Act XXIII. of 1861.

Punishment for false verification of plaint, statement, &c.

XXIV. If any plaint, written statement, or declaration in writing required by this Act to be verified, shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the provision of the law for the time being in force for the punishment of giving or fabricating false evidence.

CHAPTER III.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

Suits to be commenced by plaint.

XXV. All suits shall be commenced by a plaint which, except when otherwise specially provided by this Act, shall be presented to the court by the plaintiff in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf.

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XXVI. The plaint shall be distinctly written in the language in ordinary use in proceedings before the court, and shall contain the following particulars:— Particulars to be given in the plaint.

(1.) The name, description, and place of abode of the plaintiff.

(2.) The name, description, and place of abode of the defendant, so far as they can be ascertained.

(3.) The relief sought for, the subject of the claim, the cause of action and when it accrued; and, if the cause of action accrued beyond the period ordinarily allowed by any law for commencing such a suit, the ground upon which exemption from the law is claimed.

The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of due on (*a bond or other written instrument, as the case may be*), for the sum of , bearing date the day of , and payable on the day of , namely,—

Principal	
Interest	
Amount paid (if any)	
Balance due.....	

If the plaintiff claim exemption from any law of limitation, say—the plaintiff was an infant (*or as the case may be*) from the day of to the day of

If the suit be for the price of goods sold:—Payment of on account of maunds of (*rice, indigo, sugar, or as the case may be*) sold on the day of and the price of which became payable on the day of as per account at foot.

If the suit be for damages for an injury done:—Payment of on account of injury done to the plaintiff, [*here set out the nature of the injury, and state the particulars of the pecuniary loss (if any).*]

(4.) When the claim is for any property other than money, its estimated value.

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The following is an instance :

If the suit be for an estate or for a share in an estate paying revenue to Government :—Possession of the estate or of share in the estate, called , situate in the Zillah of the Sudder Jumma of which is and estimated value of which the plaintiff was dispossessed (*or forcibly or fraudulently dispossessed, if the case be so*) on the day of ; or to which the plaintiff became entitled by inheritance from (*or by gift, purchase, or otherwise, as the case may be*) on or about the day of .

(5.) When the claim is for land or for any interest in land, the nature of the tenure or interest must be specified ; and if the claim be for land forming part of a village or other known division, or for a house, garden, or the like, its situation shall be described by the setting forth of boundaries, or in such other manner as may suffice for its identification.

(6.) In all suits by or against the Government, or one of its officers in his official capacity, or any corporation, or any company authorized to sue and be sued in the name of an officer or trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or the name of the corporation, or the name or names of the officer or trustees of the company, shall be inserted in Nos. 1 and 2 instead of the name and description of the plaintiff or defendant. But in all other cases it shall be necessary to specify the names of all the parties.

Plaint to be subscribed and verified.

XXVII. The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following or to the like effect :—

I (A. B.) the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

If plaintiff by reason of absence be unable to subscribe and verify the plaint.

XXVIII. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the court may allow the plaint to be subscribed and verified on behalf of the plaintiff by any person whom the court may consider competent to make the verification. In

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suits by a corporation or a company authorised to sue and be sued in the name of an officer or trustees, the plaint shall be subscribed and verified on behalf of the corporation or company by any director, secretary, or other principal officer of the corporation or company who may be able to depose to the facts of the case.

In suits by a corporation or company, a director or secretary shall verify the plaint.

XXIX. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or if it contain particulars other than those required to be specified whether relevant to the suit or not, or if the statement of particulars be unnecessarily prolix, or if the plaint be not subscribed and verified as hereinbefore required, the court may reject the plaint, or at its discretion may allow the plaint to be amended.

Court may reject plaint if it do not contain the required particulars, &c.

XXX. If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the court, the plaint shall be returned to the plaintiff in order to its being presented in the proper court.

Plaint to be returned if the claim is beyond the jurisdiction of the court.

XXXI. If it appear to the court that the claim is improperly valued, or being properly valued that the plaint is written upon stamped paper of inadequate value, and the plaintiff, on being required by the court to correct such improper valuation or to supply such additional stamp paper as may be necessary, shall not comply with the requisition, the court shall reject the plaint.

Plaint to be rejected if improperly valued or insufficiently stamped.

XXXII. If upon the face of the plaint, or after questioning the plaintiff, it appear to the court that the subject matter of the plaint does not constitute a cause of action, or that the right of action is barred by lapse of time, the court shall reject the plaint. Provided that the court may in any case allow the plaint to be amended, if it appear proper to do so.

Plaint to be rejected if it appear to the court that plaintiff has no cause of action or that right of action is barred by lapse of time. Amendment of plaint.

XXXIII. Repealed by Sec. I. Act XXIII. of 1861.

XXXIV. A suit by a party ordinarily residing out of the British territories in India, and not possessing any land or other immovable property within those territories independent of the property in suit, shall not be entertained, unless the plaintiff, at the time of presenting the plaint or

Security for costs to be furnished by plaintiff at the time of presenting the plaint if he resides out of the British territories in India.

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Plaint to be rejected if security be not furnished.

within such time as the court shall order, furnish security for the payment of all costs that may be incurred by the defendant in the suit. In the event of such security not being furnished, the court shall return the plaint to the plaintiff.

Security for costs may be required in any stage of suit, if it appear that plaintiff resides out of India.

XXXV. If in any stage of a suit it shall appear to the court that the plaintiff (being sole plaintiff) is a person residing out of the British territories in India, the court may order him, within a time to be fixed by such order, to furnish security for the payment of all costs incurred and to be incurred by the defendant in the suit. In the event of such security not being furnished within the time so fixed, the court shall pass judgment against the plaintiff by default, unless he be permitted to withdraw from the suit under the provisions of Section XCVII.

Appeal from order rejecting plaint.

XXXVI. Whenever a plaint is rejected under any of the foregoing sections, an appeal shall lie from the order rejecting the plaint. The rejection of a plaint on any of the grounds mentioned in Sections XXIX. and XXXI. shall not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action.

Proceeding in a suit for immovable property in different jurisdictions.

XXXVII. If the suit be for land or other immovable property situate partly within the jurisdiction of the court and partly within the jurisdiction of some other court or courts, the court shall proceed according to the rules contained in Section XI, Section XII. or Section XIII, as the case may be.

When the plaint is admissible, particulars to be entered in a register.

XXXVIII. If the court consider the plaint admissible, the particulars mentioned in Section XXVI. of this chapter shall be entered in a book to be kept for the purpose, and called the register of civil suits; and the entries shall be numbered in every year according to the order in which the plaint is presented. The register shall be kept in the form contained in the schedule (A) hereunto annexed.

Form of the register.

Written document to be produced in Court when plaint is presented.

XXXIX. When the plaintiff sues upon any written document, or relies upon any such document as evidence in support of his claim, he shall produce the same in court when the plaint is presented, and shall at the same time

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deliver a copy of the document to be filed with the plaint; if the document be an entry in a shop-book or other book, the plaintiff shall produce the book to the court, together with a copy of the entry on which he relies. The court shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall return the document to the plaintiff. The plaintiff may, if he think proper, deliver the original document to be filed instead of the copy. The court may, if it see sufficient cause, direct any written document so produced to be impounded and kept in the custody of some officer of the court, for such period and subject to such conditions as to the court shall seem meet. Any document not produced in court by the plaintiff when the plaint is presented, shall not be received in evidence on his behalf at the hearing of the suit without the sanction of the court.

And copy filed with plaint.

Original to be marked and returned.

If plaintiff wish, original may be filed instead of copy.

Court may order document to be impounded.

Document not produced when plaint filed, to be inadmissible in evidence.

XL. If the plaintiff require the production of any written document in the possession or power of the defendant, he may, at the time of presenting the plaint, deliver to the court a description of the document, in order that the defendant may be required to produce the same.

If plaintiff require production of document in possession of defendant.

Of Summoning the Defendant.

XLI. When the plaint has been registered, a summons under the signature of the judge and the seal of the court shall be issued to the defendant to appear and answer the claim, on a day to be therein specified, in person or by a pleader of the court duly instructed and able to answer all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions. The court shall determine at the time of issuing the summons whether it shall be for the settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly.

On plaint being registered, summons to issue to defendant.

Summons to be either to settle the issues, or for the final disposal of the case.

XLII. If the court see reason to require the personal attendance of the defendant, the summons shall order the defendant to appear personally in court on the day therein specified. If the court see reason to require the personal attendance of the plaintiff on that day, it may make an

Personal appearance of defendant or plaintiff.

If resident within 50 miles.

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Or within the local jurisdiction of the Court.

order for such attendance. Provided that no plaintiff or defendant shall be ordered to attend in person, who at the time is *bonâ fide* residing at a distance of more than fifty miles from the place where the court is held, unless he be resident within the limits of the jurisdiction of the court.

Summons shall order defendant to produce documents.

XLIII. The summons to appear shall order the defendant to produce any written document in his possession or power, of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence.

Forms of Summons.

XLIV. The summons shall be in the form contained in the schedule (B) hereunto annexed, or to the like effect.

The day for appearance of defendant how to be fixed.

XLV. The day for the appearance of the defendant shall be fixed by the court with reference to the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant a sufficient time to enable him to appear and answer in person or by a pleader on such day.

Court may order personal appearance of a director or secretary in suits against a corporation or company.

XLVI. In suits against a corporation or a company authorized to sue and be sued in the name of an officer or trustees, the court may, if it think proper, require the personal attendance of any director, secretary, or other principal officer of the corporation or company who may be able to answer all material questions relating to the suit.

Service of Summons on the Defendant.

Summons shall be served by officer of Court.

XLVII. The summons shall be delivered to the nazir or other proper officer of the court to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

How service shall be made.

When there are several defendants.

XLVIII. Service of the summons shall be made by delivering or tendering a copy thereof under the signature of the judge and seal of the court; and when there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person, when practicable. Service on agent sufficient.

XLIX. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

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Who may be agent to receive service.

L. Besides the recognized agent described in Section XVII, any person residing within the jurisdiction of the court may be appointed an agent to receive the service of summonses and other processes.

Appointment of such agent to be in writing and to be filed in Court.

LI. The appointment of such agent shall be in writing, and the original appointment, or a copy thereof if the appointment be a general one, shall be filed in the court.

Agent of Government.

LII. The Government pleader in each court shall be accounted the agent of the Government for the purpose of receiving services of summonses and other judicial processes against the Government, issuing out of the court in which he may be the pleader of Government.

If defendant cannot be found, and has no agent, service may be made on a male member of his family.

LIII. When the defendant cannot be found, and has no agent empowered to accept the service of the summons, it may be made on any adult male member of his family residing with him.

In all cases the person served is to be required to endorse the summons.

LIV. In all cases where the summons is served on the defendant personally or any agent or other persons on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons or on a copy thereof under the seal of the court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient, if it be otherwise proved to the satisfaction of the court.

But service is sufficient without.

If the summons cannot be served, a copy shall be fixed to the door of the dwelling house.

If defendant do not dwell in the place mentioned, the summons shall be returned with an endorsement of non-service.

Proviso.

LV. When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving officer shall fix the copy of the summons on the outer door of the house in which the defendant is dwelling; and if he is not dwelling in the place mentioned in the summons, the serving officer shall return the summons to the court from whence issued, with an endorsement thereon that he has been unable to serve it. Provided that, if the serving officer is informed that the defendant is to be found or has his dwelling in a place within the jurisdiction of the court other than that mentioned in the summons, the officer may proceed to that place to serve the summons.

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If served, time and manner of service to be endorsed on summons.

LVI. The serving officer shall, in all cases in which the summons has been served, endorse on the original summons or on a copy thereof under the seal of the court, the time when and the manner in which it was served.

When summons is returned unserved, Court to order substituted service, if satisfied that the defendant is avoiding service.

LVII. When a summons is returned to the court without having been served, if the plaintiff shall satisfy the court that there is reasonable ground for believing that the defendant is keeping out of the way of its officer for the purpose of avoiding the service of the summons, the court shall order the summons to be served by fixing up a copy thereof upon some conspicuous place in the court-house, and also upon the door of the house in which the defendant shall have last resided, if it be known where he last resided; or that the summons shall be served in such other manner as the court shall think proper. And the service which shall be substituted by order of the court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

When service is substituted, the time for appearance to be fixed.

LVIII. Whenever service shall be substituted by order of the court by virtue of the power contained in the last preceding section, the court shall fix such time for the appearance of the defendant as the case may require.

How the summons is to be served when the defendant is resident within the jurisdiction of another court and has no agent to accept service.

LIX. If the defendant be resident within the jurisdiction of any court other than that in which the suit is instituted, and have no agent empowered to accept the service, the court in which the suit is instituted shall transmit the summons, either by an officer of the court or by post, to any court having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require; and the court to which the summons is transmitted, shall, upon receipt of the summons, deliver the same to the nazir or other proper officer of such court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be retransmitted to the court from whence it originally issued.

How the summons is to be served when

LX. If the defendant be resident out of the British territories in India, and have no agent empowered to accept

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the service, the summons shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: in such case the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the court is held and the place where the defendant resides; and if, on the day fixed for the hearing of the suit or on any day to which the hearing may be adjourned, the defendant shall not appear in person or by pleader, the plaintiff may apply to the court, and it shall be lawful for the court to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to the court may seem meet.

the defendant resides out of the British territories in India, and has no agent to accept service.

Time for appearance.

In case of non-appearance of defendant, Court may direct suit to proceed subject to conditions.

LXI. When the suit is for land or other immovable property, and the summons for any reason cannot be served on the defendant in person and the defendant has no agent empowered to accept the service, the summons may be served on any agent of the defendant in charge of such land or other immovable property.

In suits for immovable property, service may in certain cases be made on agent in charge of such property.

LXII. When the defendant is in the service of the Government, the court may transmit a copy of the summons to the head officer of the office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the court that the summons may be most conveniently so served. If the defendant be an officer or soldier, the court shall transmit a copy of the summons to the commanding officer of the corps to which the defendant belongs, for the purpose of being served on him. The officer to whom the summons is transmitted, after causing the summons to be served on the person to whom it is addressed if practicable, shall return it to the court with the written acknowledgment of such person endorsed thereon. If from any cause the summons cannot be served upon the person to whom it is addressed, it shall be returned to the court by which it was transmitted, with information of the cause which has prevented the service. In such case the court shall adopt such other means of serving the summons as it may deem proper.

How service may be made on Government servants.

Service on Officers and Soldiers.

LXIII. When the suit is against a corporation or a company authorized to sue and be sued in the name of an

Service on a corporation or company.

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officer or trustees, the summons may be served by leaving the same at the registered office (if any) of the company, or sending it through the post office by a letter addressed to such office, or by giving it to any director, secretary, or other principal officer of the corporation or company.

In what case letter may be substituted for a summons.

LXIV. Nothing contained in the preceding rules shall be construed to prevent the court from substituting for the summons, a letter or other appropriate communication under the signature of the judge and seal of the court, when the person whose appearance is required is of a rank which entitles him to such mark of consideration. The letter or other communication shall contain all the particulars required to be stated in the summons, and shall be treated in all respects as a summons.

Service how to be made in such case.

LXV. When a letter or other communication is substituted for a summons under the authority of the last preceding section, it may be transmitted through the post office, or by a special messenger selected by the court, or in any other manner which the court may deem sufficient; unless the party shall have an agent empowered to accept service of judicial process, in which case delivery to such agent shall be deemed sufficient service.

Proof of due service and delivery of summons, letter, &c., transmitted through the post.

LXVI. Whenever it is provided that any summons, letter, or other communication may be transmitted to the person to whom it is addressed through the post office, proof that the same was correctly addressed to such person at his place of residence, and that it was duly posted and registered according to Section XX. Act XIV. of 1866* (*for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office*), shall be sufficient proof of the due service and delivery of the summons, letter, or other communication, in the absence of evidence to the contrary.

Of Suits against Government and Public Officers.

In suits against Government, summons to be served on Government Pleader.

LXVII. If the suit be against the Government, the summons shall be served on the Government pleader. The court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary com-

* Vide Section IV. Act XIV. of 1866.

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munication with the Government through the proper channels, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government, and may extend the time at its discretion on the application of the Government pleader. The court may also, if it think proper, direct the attendance of a person who may be able to answer all material questions relating to the suit.

Appearance and answer.

LXVIII. If the suit be against an officer of the Government for an act which the plaintiff alleges to have been done by such officer in his official capacity, the summons shall be served upon such officer in the manner hereinbefore provided.

In suits against Government officers for alleged official acts, summons to be served on them.

LXIX. If the officer on receiving the summons shall consider it proper to make a reference to Government before answering to the plaint, he may move the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channels; and the court upon such motion may extend the time for so long as shall appear to it to be requisite.

Court may grant extension of time to enable officer to make a reference to Government.

LXX. If the Government shall undertake the defence of the suit, the Government pleader shall be furnished with authority to appear and answer to the plaint; and, upon motion made by him, the court shall order a note to that effect to be entered in the register.

If Government undertake defence, Government Pleader to appear and move that a notice of his appearance be entered in the register.

LXXI. If such motion shall not be made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment.

If no such motion be made, case to proceed as in a suit between private parties. But defendant not liable to arrest before judgment.

LXXII. If in any such suit the court shall require the personal appearance of the defendant, and the defendant shall satisfy the court that he cannot absent himself from his post without injury to the public service, the court shall exempt him from such appearance, but he shall be liable to be examined in any way in which an absent witness may be examined.

Defendant may in certain cases be exempted from personal appearance.

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How Persons not before the Court may be made Parties to a Suit.

Court may adjourn hearing and direct that parties appearing to be interested in a suit shall be made parties to the suit.

LXXIII. If it appear to the court, at any hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in the subject matter of the suit, and who may be likely to be affected by the result, have not been made parties to the suit, the court may adjourn the hearing of the suit to a future day to be fixed by the court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the court shall issue a notice to such persons in the manner provided in this Act for the service of a summons on a defendant.

Of Arrest before Judgment.

In suits for movable property, when defendant is about to leave the jurisdiction, &c., plaintiff may apply that security be taken.

LXXIV. If in any suit, not being a suit for land or other immovable property, the defendant, with intent to avoid or delay the plaintiff, or to obstruct or delay the execution of any decree that may be passed against him, is about to leave the jurisdiction of the court, or has disposed of or removed from the jurisdiction of the court his property or any part thereof, the plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the suit.

Court may issue warrant to bring up defendant to show cause why he should not give bail.

LXXV. If the court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave its jurisdiction with the intent of avoiding or delaying the plaintiff, or that he has disposed of or removed from the jurisdiction of the court his property or any part thereof with the intent to obstruct or delay the execution of any decree, it shall be lawful for the court to issue a warrant to the proper officer, enjoining him to bring the defendant before the court, that he may show cause why he should not give good and sufficient bail for his appearance.

If defendant fail to show cause, Court

LXXVI. If the defendant fail to show such cause, the court shall order him to give bail for his appearance at any

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time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs. Any order made by the court under the provisions of this section shall be open to appeal by the defendant.

may order him to give bail.

Appeal.

LXXVII. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the court may accept such deposit.

Deposit in lieu of bail.

LXXVIII. In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant, until the execution of the decree if the court shall so order.

Defendant to be committed to custody if he cannot give security.

LXXIX. If it shall appear to the court that the arrest of the defendant was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the court that there was no probable ground for instituting the suit, the court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand rupees, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of such arrest. Provided that the courts shall not award a larger amount of compensation under this section than it is competent to such court to decree in an action for damages. An award of compensation under this section shall bar any suit for damages in respect of such arrest.

Compensation to defendant arrested on insufficient grounds.

Proviso.

LXXX. If in any suit the defendant is about to leave the British territories in India with intent to remain absent so long that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant, the plaintiff may make an application to the court to the effect and in the manner aforesaid, and

When the defendant is about to leave India, the application to be made to the court.

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the procedure thereupon shall be in all respects the same as hereinbefore provided.

Of Attachment before Judgment.

In what cases plaintiff may apply before judgment for security from defendant to fulfil decree, and in default for an attachment of defendant's property.

LXXXI. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the court where the suit is pending, the plaintiff may apply to the court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant, shall be attached until the further order of the court.

Application how to be made.

LXXXII. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof; and the plaintiff shall, at the time of making the application, declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

Form of warrant to be issued.

LXXXIII. If the court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the court to issue a warrant to the proper officer, commanding him to call upon the defendant, within a time to be fixed by the court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the court when required the said property or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security. The court may also in the warrant direct the attachment, until further order, of the whole or any portion of the property specified in the application.

If cause be not shown, or security be not furnished, pro-

LXXXIV. If the defendant fail to show such cause or to furnish the required security within the time fixed by the

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court, the court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the court shall order the attachment to be withdrawn.

perty may be attached.

Withdrawal of attachment.

LXXXV. The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding section shall be open to appeal by the defendant.

How the attachment is to be made.

Appeal.

LXXXVI. In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money.

Claims to property attached before judgment, how to be investigated.

LXXXVII. In all cases of attachment before judgment, the court which passed the order for the attachment shall at any time remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment.

Attachment may be removed when security is furnished.

LXXXVIII. If it shall appear to the court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the court that there was no probable ground for instituting the suit, the court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. Provided that the court shall not award a larger amount of compensation under this section than it is competent to such court to decree in an action for damages. An award of compensation under this section shall bar any suit for damages in respect of such attachment.

Compensation for attachment applied for on insufficient grounds, &c.

Proviso.

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Attachment not to affect the rights of persons not parties to the suit, or bar the execution of decrees.

LXXXIX. Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Court may stay the sale of property already under attachment, when execution of a decree fraudulently obtained is applied for.

XC. If it shall appear to the court by whose order the property may have been attached before judgment, that there is reasonable ground for supposing that the decree, in satisfaction of which the sale of the property is applied for, was obtained by fraud or other improper means, the court may refuse to allow the property to be sold in execution, if the decree be a decree of that court; or if it be a decree of another court, may stay the proceedings for a reasonable time to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.

Special case in which party may be put in immediate possession of land the subject of suit.

XCI. Whenever lands paying revenue to Government or a tenure liable to summary sale under the provisions of Regulation VIII, 1819 of the Bengal Code (*to declare the validity of certain tenures and to define the relative rights of Zemindars and Putnee Talookdars, &c.*) form the subject of a suit, if the party in possession of such lands or tenure shall neglect to pay the Government revenue or the rent due to the proprietor of the estate, as the case may be, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue or rent due previously to the sale (and with or without security, at the discretion of the court), be put in immediate possession of the lands or tenure; and the court in its decree may award against the defendant the amount so paid, with interest thereupon at such rate as to the court may seem fit, or may charge the amount so paid, with interest thereupon, at such rate as the court may order, in any adjustment of accounts which may be directed in the final decree upon the suit.

Of Injunctions.

Cases in which an injunction to stay waste, &c. may be granted.

XCII. In any suit in which it shall be shown to the satisfaction of the court that any property which is in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, it shall be lawful for the court

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to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and preventing him from wasting, damaging, or alienating the property, as to the court may seem meet. And in all cases in which it may appear to the court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the court to appoint a receiver or manager of such property, and, if need be, to remove the person in possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the court may seem proper. If the property be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the collector, the court may appoint the collector to be receiver and manager of such land, unless the Government shall by any general order prohibit the appointment of collectors for such purpose, or shall in any particular case prohibit the appointment of the collector to be such receiver.

Or in which a receiver or manager may be appointed.

When the Collector may be appointed receiver or manager.

XCIII. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the court for an injunction to restrain the defendant from the repetition, or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted by the court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such court shall seem reasonable and just, and in case of disobedience, such injunction may be enforced by imprisonment in the same manner as a decree for specific performance:

In suits to restrain breach of contract, &c.

Injunction to restrain repetition or continuance of breach.

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Proviso.

Provided always that any order for an injunction may be discharged or varied or set aside by the court, on application made thereto by any party dissatisfied with such order.

Appeal.

XCIV. Any order made under either of the last two preceding sections shall be open to appeal by the defendant.

Before granting injunction, Court may direct reasonable notice to be given to the opposite party.

XCV. The court may in every case before granting an injunction, direct such reasonable notice of the application for the same to be given to the opposite party as it shall see fit.

Compensation to defendant for needless issue of injunction.

XCVI. If it shall appear to the court that the injunction was applied for on insufficient grounds, or if the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the court that there was no probable ground for instituting the suit, the court may (on the application of the defendant) award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction.

Proviso.

Provided that the court shall not award a larger amount of compensation under this section than it is competent to such court to decree in an action for damages. An award of compensation under this section shall bar any suit for damages in respect of the issue of the injunction.

Of the withdrawal and adjustment of Suits.

Court may allow plaintiff to withdraw from a suit, with liberty to bring a fresh suit.

XCVII. If the plaintiff at any time before final judgment satisfy the court that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, it shall be competent to the court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.

Adjustment or compromise.

XCVIII. If a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff

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in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith.*

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

Suit not to abate by death in certain cases.

XCIX. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survive.

Proceeding in case of death of one of several plaintiffs or defendants, if the cause of action survive.

C. If there be two or more plaintiffs or defendants and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suits shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

Proceeding in case of death of one of several plaintiffs, where the cause of action accrues to the survivor, and the representative of the deceased.

CI. If there be two or more plaintiffs, and one of them die, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone, but shall survive to them and the legal representative of the deceased plaintiff jointly, the court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representative in the register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall be interested in and shall be bound by the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Proceeding in case of death of sole or sole surviving plaintiff.

CII. In case of the death of a sole plaintiff or sole surviving plaintiff, the court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the register of the suit, and the suit shall thereupon proceed; if no such application shall be made to the court within what it may consider a reasonable time by any person claiming to be the

* See Act VII. of 1870.

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legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the court to pass an order that the suit shall abate, and to award to the defendant the reasonable cost which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the court may, if it think proper, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

Proceeding in case of dispute as to who is the legal representative of a deceased plaintiff.

CIII. If any dispute arise as to who is the legal representative of a deceased plaintiff, it shall be competent to the court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Proceeding in case of death of one of several defendants or of a sole or sole surviving defendant.

CIV. If there be two or more defendants, and one of them die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the court specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and whom he desires to be made the defendant in his stead; and the court shall thereupon enter the name of such representative in the register of the suit in the place of such defendant, and shall issue a summons to him to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

Marriage of a female plaintiff or defendant not to abate the suit.

CV. The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the

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debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the court, be issued upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree.

Bankruptcy or insolvency when not to abate the suit.

CVI. The bankruptcy or insolvency of the plaintiff in any suit which the assignee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignee shall decline to continue the suit and to give security for the costs thereof within such reasonable time as the court may order; if the assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit.

Of Notices to produce, and how they are to be served.

Two notices in writing to be delivered to the proper officer of the Court.

CVII. Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he believes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the suit, and the production of such document, writing, or other thing has not previously been required under the provisions of Sections XL and XLIII, he shall at the earliest opportunity, deliver to the court two notices in writing to the party in whose possession or power he believes the document, writing, or other thing to be, calling upon him to produce the same; and one of such notices shall be filed in court, and the other shall be delivered by the court to the nazir or other proper officer, to be served upon such party.

Services of notices and other judicial process how to be made on a party who has not appointed a pleader to act for him.

CVIII. In all cases in which a party to a suit has not appointed a pleader to act for him, all notices and other judicial process shall be served upon such party in the manner hereinbefore provided for the service of a summons upon a defendant to appear and answer.

Of the Appearance of the parties, and consequence of non-appearance.

Parties must appear

CIX. On the day fixed in the summons for the defendant

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in person or by pleader.

to appear and answer, the parties shall be in attendance at the court-house in person or by a pleader, and the suit shall then be heard unless the hearing be adjourned to a future day which shall be fixed by the court.

If neither party appear, suit to be dismissed with liberty to the plaintiff to bring a fresh suit.

CX. If, on the day fixed for the defendant to appear and answer, or any other day subsequent thereto to which the hearing of the suit may be adjourned, neither party shall appear either in person or by a pleader when duly called upon by the court, the suit shall be dismissed. Whenever a suit is dismissed under the provisions of this section, the plaintiff shall be at liberty to bring a fresh suit unless precluded by the rules for the limitation of action; or if he shall within the period of thirty days, satisfy the court that there was a sufficient excuse for his non-appearance, the court may issue a fresh summons upon the plaint already filed.

Or if sufficient excuse for non-appearance, a fresh summons may be issued.

If plaintiff only appear, Court may proceed *ex-parte* if due service of summons be proved.

CXI. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the court that the summons was duly served, the court shall proceed to hear the suit *ex-parte*.

If defendant appear on day of adjourned hearing, and assign good cause for his previous non-appearance, he may be heard.

If the defendant appear on any subsequent day to which the hearing of the suit is adjourned, and shall assign good and sufficient cause for his previous non-appearance, he may, upon such terms as the court may direct as to payment of the costs or otherwise, be heard in answer to the suit in like manner as if he had appeared on the day fixed for his appearance.

If plaintiff only appear and due service of summons be not proved, Court may order issue of second summons.

CXII. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall not be proved to the satisfaction of the court that the summons was duly served in any of the modes of service hereinbefore provided, the court may direct a second summons to the defendant to be issued in any of the said modes.

If plaintiff only appear, and service of summons be proved, but the service was not in due time, Court may adjourn hearing and direct notice to be given to defendant.

CXIII. If the plaintiff shall appear in person or by a pleader, and the defendant shall not appear in person or by a pleader, and it shall be proved to the satisfaction of the court that the summons was served on the defendant but not in sufficient time to enable the defendant to appear and answer on the day fixed in the summons, the court shall

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postpone the hearing of the suit to a future day to be fixed by the court, and may direct notice of such day to be given to the defendant.

If defendant only appear, Court to pass judgment by default against plaintiff, unless defendant admit the claim.

CXIV. If the defendant shall appear in person or by a pleader, and the plaintiff shall not appear in person or by a pleader, the court shall pass judgment against the plaintiff by default, unless the defendant admit the claim, in which case the court shall pass judgment against the defendant upon such admission. When judgment is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same cause of action.

No fresh suit after such judgment.

When there are several plaintiffs or defendants each may authorize the other to appear for him.

CXV. When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed in the court; when so filed, it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act, were a pleader of the court.

Consequence of non-appearance of one or more of several plaintiffs.

CXVI. If there are two or more plaintiffs, and one or more of them shall appear in person or by a pleader or by a co-plaintiff duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-plaintiff duly authorized, it shall be competent to the court to proceed with the suit at the instance of the plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if there are two or more defendants, and one or more of them shall appear in person or by a pleader or by a co-defendant duly authorized, and the other or others of them shall not appear in person or by a pleader or by a co-defendant duly authorized, the court shall proceed with the suit to judgment, and shall at the time of passing judgment give such order with respect to the defendant or defendants who shall not have appeared, as shall be just and proper in the circumstances of the case.

Consequence of non-appearance of one or more of several defendants.

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Consequence of non-appearance, without sufficient cause shown, of any party to a suit summoned or ordered to appear in person.

CXVII. If any plaintiff or defendant who shall have been ordered or summoned to appear personally under the provisions of Section XLII, shall not appear in person, or shew sufficient cause to the satisfaction of the court for failing to appear, such plaintiff or defendant shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants respectively, who do not appear either in person or by pleader.

Court to receive declaration in support of cause shown.

CXVIII. In support of the cause shown by a plaintiff or defendant for failure to appear in person, the court shall receive any declaration in writing,* if signed by such plaintiff or defendant, and verified in the manner herein-before provided for the verification of plaints.

No appeal from judgments passed ex-parte or by default.

CXIX. No appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

When and how judgment *ex-parte* against a defendant may be set aside.

But in all cases in which judgment may be passed *ex-parte* against a defendant, he may apply† to the court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the court that the summons was not duly served, or that the defendant was prevented, by any sufficient cause, from appearing when the suit was called on for hearing, the court shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the suit.

When and how judgment by default against a plaintiff may be set aside.

In all cases of judgment against a plaintiff by default, he may apply‡ for an order to set it aside; and if it shall be proved to the satisfaction of the court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the suit.

No judgment to be set aside without notice to opposite party.

But no judgment shall be set aside on any such application as aforesaid, unless notice thereof have been served on the opposite party.

Order for Setting aside judgment shall be final.

In all cases in which the court shall pass an order under this section for setting aside a judgment, the order shall be final; but in all appealable cases in which the court shall

* See Act VII. of 1870. † See Act IX. of 1871.

‡ See Act IX. of 1871.

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rejecting the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

In appealable cases, an appeal from order of rejection.

Proviso.

Of Written Statements.

CXX. The parties or their pleaders may tender at the first hearing of the suit, written statements of their respective cases, and the court shall receive the same and put them on the record. Such statements shall be written on the stamp paper prescribed for petitions to the court where a stamp is required for petitions.

Written statements may be tendered by the parties at the first hearing of the suit.

Written statements to be on stamp paper.

CXXI. If in a suit for debt the defendant desire to set off against the claim of the plaintiff the amount of any debt due to him from the plaintiff, he shall tender a written statement containing the particulars of his demand, and the court shall thereupon enquire into the same. Provided that, if the sum claimed by the defendant exceed the amount cognizable by the court, the defendant shall not be allowed to set off the same unless he abandon the excess.

Particulars of set off to be given in a written statement.

Abandonment of excess of set-off over claim.

CXXII. No written statement shall be received after the first hearing of the suit, unless called for by the court. But it shall be competent to the court, at any time before final judgment, to call for a written statement, or an additional written statement from any of the parties.*

No written statement to be received after first hearing unless called for by the Court.

Court may at any time call for a written statement.

CXXIII. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the court. Written statements shall be subscribed and verified in the manner herein-before provided for subscribing and verifying plaints, and no written statement shall be received unless it be so subscribed and verified.

How written statements are to be framed.

Written statements to be subscribed and verified.

CXXIV. If it shall appear to the court that any written statement presented by or on behalf of a party, whether the

Court may reject a written statement

* See Act VII. of 1870.

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which is argumentative, prolix, or irrelevant.

same have been spontaneously tendered or have been called for by the court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the court may reject the same, and return it to the party with the order of rejection endorsed thereon; and it shall not be competent to a party whose written statement has been rejected for any of these causes to present another written statement, unless it shall be expressly called for or allowed by the court.

Of the Examination of the Parties.

Oral examination of party, &c.

CXXV. At the first hearing of the suit, and if necessary at any subsequent hearing, any party who appears in person or is present in court, or the pleader of any party who appears by a pleader, or if the pleader be accompanied by another person able to answer all material questions relating to the suit, then such other person may be examined orally by the court. Such examination shall (unless the pleader be the person examined) be upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses. The substance of the examination shall be reduced to writing and form part of the record.

Oath.

Substance of the examination to be written.

Consequence of refusal of a party to answer.

CXXVI. If any party who appears in person or is present in court shall without lawful excuse refuse to answer any material question relating to the suit which the court may think proper to put to such party, the court may pass judgment against him, or make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Consequence of refusal or inability of pleader to answer.

CXXVII. If the pleader of any party who shall appear by a pleader shall refuse or be unable to answer any material question relating to the suit which the court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the court may postpone the hearing of the suit to a future day, and direct that such party shall attend in person on such day; and if the party so directed to attend shall without lawful excuse fail to appear in person on the day to be so appointed, the court may pass judgment against him, or

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make such other order in relation to the suit as it may deem proper in the circumstances of the case.

Of the Production of Documents.

Documentary evidence to be produced at first hearing.

CXXVIII. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called upon by the court, all their documentary evidence of every description which may not already have been filed in court, and all documents, writings, or other things which may have been specified in any notice which may have been served on them respectively within a reasonable time before the hearing of the suit; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production thereof at the first hearing.

Exhibits to be received and inspected by the Court. Rejection of exhibits.

CXXIX. All exhibits produced by the parties shall be received and inspected by the court; but it shall be competent to the court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Documents insufficiently stamped may be received on payment of deficient duty and penalty.

CXXX. If the exhibit be a deed, instrument, or writing, chargeable with stamp duty under any Regulation or Act for the time being in force, and it shall appear to the court that the deed, instrument, or writing, although written on stamp paper, does not bear a sufficient stamp, the court shall nevertheless receive the same in evidence, saving all just exceptions on other grounds, if the party producing it or requiring its production shall pay into court the deficiency of the stamp duty, and a penalty equal to ten times the amount of the deficiency. Provided that, if it shall appear to the court that there are reasonable grounds for believing that the deed, instrument, or writing was not properly stamped with the intention of evading the stamp laws, the court may reject the same.

Proviso.

Account of monies so received to be kept.

CXXXI. An entry of the fact of such payment and of the amount thereof shall be made in a book to be kept in the court, and shall also be endorsed on the back of such

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Monthly return to be made to Collector.

deed, instrument, or writing under the signature of the judge of the court. The court shall at the end of every month make a return to the collector of revenue of the district of the monies (if any) which it has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the suit, and the name of the party from whom such monies were received, and the date (if any) and description of the document, for the purpose of identifying the same; and the court shall pay over the said monies to the collector of revenue, or to such person as he may appoint to receive the same; and the collector of revenue, or other proper authority shall, upon production of the deed, instrument, or writing, with the endorsement herein-before mentioned, cause such additional stamp as may be necessary to be affixed to such deed, instrument, or writing in respect of the sums so paid as aforesaid.

Admitted exhibits to be marked and filed.

CXXXIII. When an exhibit is received by the court and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record. Provided that, if the exhibit be an entry in any shop book or other book, the party on whose behalf such book is produced shall furnish a copy of the entry, which copy shall be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the party producing it.

Proviso.

No stamp duty in respect of the production or filing of exhibits.

CXXXIII. No stamp duty shall be leviable in respect of the production or filing of any exhibit, anything contained in any Regulation or Act notwithstanding.

Rejected exhibits to be marked and returned.

CXXXIV. When an exhibit is rejected by the court, it shall be endorsed in the manner specified in Section CXXXII, with the addition of the word "rejected," and the endorsement shall be subscribed by the judge. The exhibit shall then be returned to the party who produced it, unless the court shall think proper, for special reasons (as on suspicion of forgery) to detain it.

Unless detained by the Court.

After the time for appeal has elapsed,

CXXXV. When the time for preferring an appeal from the decision passed in the suit has elapsed, or if an appeal

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has been preferred from such decision, then after the appeal has been finally disposed of, any person, whether a party to the suit or not, who may be desirous of receiving back any exhibit produced by him in the suit, shall be entitled, on application to the court in which such exhibit may be, to receive back the same unless the further use of such exhibit has been superseded by the terms of the decree, or the court has directed it to be detained for purposes of public justice. exhibit admitted in evidence may be returned.

CXXXVI. Any exhibit may be returned before the time mentioned in the last preceding section, if the court in which the document may be shall think proper, for special reasons, to order its return. But in every case a copy, properly certified and made at the expense of the applicant, shall be substituted for the original in the record of the suit. Exhibit may be returned before the time limited for special reasons. Certified copy to be kept.

CXXXVII. Whenever an exhibit once received by a court of justice and admitted in evidence is returned, a receipt shall be given by the party receiving it in a receipt-book kept for the purpose. Receipt to be given for returned exhibits.

CXXXVIII. Any civil court may of its own accord, or on the application of any of the parties to a suit, send for, from its own record or from any other public office or court the record of any other suit or case, or any other official papers (not being documents relating to affairs of State, the production of which would be contrary to good policy) and inspect the same, when the inspection of such record or paper shall appear likely to elucidate the facts of issues before the court, and to promote the ends of justice. Court may send for papers from its own records or from other public offices or courts. Except State papers.

Of the Settlement of Issues.

CXXXIX. At the first hearing of the suit the court shall ascertain and ascertain upon what questions of law or fact the parties are at issue, and shall thereupon proceed to frame and record the issues of law and fact on which the right decision of the case may depend. The court may frame the issues from the allegations of fact which it collects from the oral examination of the parties or their pleaders, notwithstanding any difference between such allegations of fact and the allegations of fact contained in the written statements, if any, furnished by the parties or their pleaders. Framing of issues.

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Court may examine witnesses or documents before framing the issues.

CXL. If the court shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the court, or without the reading of some document not produced by any of such persons, it may adjourn the framing of the issues to a future day, to be fixed by the court, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by summons or other suitable process.

Amendment of issues.

Additional issues.

CXLI. At any time before the decision of the case, the court may amend the issues or frame additional issues on such terms as to it shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

Of Issues by Agreement of Parties.

Questions of fact or law may by agreement be stated by the parties in the form of an issue.

CXLII. When the parties to a suit are agreed as to the question or questions of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the court upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that upon such finding some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that upon such finding one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act, specified in the agreement, and having reference to the matter in dispute.

Court, if satisfied that the agreement was executed *bonâ fide*, may decree accordingly.

CXLIII. If the court shall be satisfied, after an examination of the parties or their pleaders, and taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that the parties have a *bonâ fide* interest in the decision of such question, and that the same is fit to be tried and decided, it may proceed to record and try the same, and deliver its finding or opinion thereon in the same

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manner as if the issue had been framed by the court, and may, upon the finding or decision on such issue, give judgment for the sum so agreed on or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

When the Suit may be disposed of at the First Hearing.

If the parties are not at issue on any question of law or fact.

CXLIV. If at the first hearing of a suit it shall appear that the parties are not at issue on any question of law or fact, the court may at once give judgment.

If the parties are at issue on questions of law or fact.

CXLV. When the parties are at issue on some question of law or fact, and issues have been framed by the court as hereinbefore provided, if the court shall be satisfied that no further argument or evidence than such as the parties or their pleaders can at once apply is required upon any such of the issues of law or fact as may be sufficient for the decision of the suit, the court, after hearing such argument and evidence, may proceed to determine such issue or issues, and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons shall have been issued for the settlement of issues only or for the final disposal of the suit; otherwise the court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence or for such further argument as the case may require. Provided that if the summons shall have been issued for the final disposal of the suit and either party shall fail without sufficient cause to produce the evidence on which he relies, the court may at once give judgment.

Court if satisfied, may determine the issues and give judgment.

Proviso where summons is for final disposal.

Of Adjournment.

Court may grant time or adjourn to a future day.

CXLVI. The court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to either of them, and may from time to time adjourn the hearing of the suit; and in all such cases the court shall fix a day for the further hearing of the suit. Provided that in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the court shall otherwise direct.

Proviso

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How Court is to proceed if the parties fail to appear on the day fixed.

CXLVII. If, on any day to which the hearing of the suit may be adjourned, the parties, or either of them shall not appear in person or by pleader, the court may proceed to dispose of the suit in the manner specified in Section CX, Section CXI, or Section CXIV, as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

Court to proceed if either party fail to produce proofs or witnesses.

CXLVIII. If either party to a suit to whom time may have been granted shall fail to produce his proofs, or to cause the attendance of his witnesses, or to perform any other act for which time may have been allowed, the court shall proceed to a decision of the suit on the record, notwithstanding such default.

Of Summoning Witnesses.

Application for summons.

CXLIX. The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issues have been recorded if the summons to the defendant be for the settlement of issues only, obtain, on application to the court, sommonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

No stamp duty on application for summons.

CL. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

Expenses of witnesses to be paid before issue of summons.

CLI. The person applying for a summons shall pay into court such a sum of money as shall appear to the court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the court in which he may be required to attend, and for one day's attendance. If the court be a subordinate court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the court to which such court shall be immediately subordinate. The sum so paid into court shall be tendered to the witness or

Scale of expenses.

Tender of expenses to witness.

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other person at the time of serving the summons, if it can be served personally. If it shall appear to the court that the sum paid into court on account of the travelling and other expenses of the witness or other person in passing to and from the court is not sufficient to cover such expenses, the court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other person summoned for a longer period than one day, the court may from time to time order the party at whose instance he was summoned, to pay into court such sum as may be sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

If sum be not sufficient.

Expenses if witness is detained.

CLII. Every summons for the attendance of a witness or other person shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the witness or other person may be called on to produce, shall be described in the summons with convenient certainty.

Time, place, and purpose of attendance to be specified in summons.

CLIII. Any person, whether a party to a suit or not, may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce a document.

Service of Summons on a Witness.

CLIV. Every summons to a witness or other person shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

How and when the summons shall be served.

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Service to be on the witness, or a male member of his family.

CLV. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult male member of his family residing with him.

When the summons cannot be served, it is to be returned to the court.

CLVI. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving officer shall return the summons to the court from whence it issued, with an endorsement thereon that he has been unable to serve it.

Time and manner of service to be endorsed on the summons.

CLVII. The serving officer shall, in all cases in which the summons has been served, endorse on the original summons the time when, and the manner in which it was served.

How a summons on a witness who resides in another jurisdiction is to be served.

CLVIII. If the person required to attend be resident within the jurisdiction of any other court than that in which the suit is pending, the summons shall be transmitted by the court in which the suit is pending, to any court having jurisdiction at the place where the witness resides by which it can be most conveniently served; and the court to which the summons is sent shall, upon receipt thereof, deliver the same to the nazir or other proper officer of such court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the court from whence it originally issued.

When a witness absconds, his property may be attached.

CLIX. If the summons for the attendance of any person either to give evidence or to produce a document, cannot be served in either of the ways herein-before specified, the court, on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the court may, at the instance of the party on whose application the summons was issued, make an order for the attach-

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ment of the movable and immovable property of such person, to such amount as the court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following section.

How the Court is to proceed with the witness on his appearance.

CLX. If, on the attachment of the property, such witness or other person shall appear and satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it shall deem fit. If such witness or other person shall not appear, or appearing shall fail to satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons. If the witness or other person shall pay into court the costs and fine as aforesaid, the court shall order the property to be released from attachment.

Of the Examination of Parties as Witnesses.

A party to a suit appearing in person may be examined either in his own behalf or on behalf of any other party.

CLXI. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

Special application to be made for the examination of a party as a witness

CLXII. If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the court for an order requiring the attendance of the party, and shall show to the satisfaction of the court sufficient grounds in support of such application, otherwise a summons shall not be issued.

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The Court may first issue a notice to show cause.

CLXIII. The court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

Court shall receive a written declaration in support of the cause shown.

CLXIV. In support of the cause shown, the court shall receive any declaration in writing of the party, if signed by him and verified in the manner hereinbefore provided for the verification of plaints, and delivered into the court by himself or his pleader.

If no sufficient cause be shown, summons to issue.

CLXV. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the court shall enlarge the time for that purpose, the court shall issue its order requiring the party to attend and give evidence.

Court may of its own accord at any time summon a witness.

CLXVI. If the court shall think it necessary for the ends of justice to examine any party to the suit or to inspect any document in his possession or power, the court may of its own accord in any stage of the suit, cause such party to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power on a day to be appointed in the summons, and may examine such party as a witness in open court, or may cause such party to be examined in such other manner as the court may direct.

Attendance of Witnesses, and consequence of non-attendance.

Persons summoned to give evidence must attend

CLXVII. Any person who shall be summoned to appear and give evidence in a suit shall be bound to attend at the time and place named in the summons for that purpose.

Consequences of non-attendance by a witness.

CLXVIII. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section CLV, shall, without lawful excuse, fail to comply with the summons, the court may order such person to be apprehended and brought before the court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections

* See Act VII. of 1870.

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CLIX and CLX with respect to a witness or other person on whom the service of a summons cannot be effected.

Consequences of refusal to give evidence.

CLXIX. If any witness, attending or being present in court, shall, without lawful excuse, refuse to give evidence or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the court so to do, the court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence or to produce the document. If after the expiration of such time the witness shall persist in his refusal, the court may proceed to deal with him according to the provisions of any law for the time being in force for the punishment of persons refusing to give evidence.

Consequence of non-attendance or refusal of a party to give evidence.

CLXX. If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the court so to do, the court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the court may deem proper in the circumstances of the case.

Any person present in Court may be called upon to give evidence though not summoned.

CLXXI. Any person present in court, whether a party to the suit or not, may be called upon by the court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the court as a party or witness, as the case may be, would under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the court.

When and how Witnesses are to be examined.

Witnesses to be examined at the hear-

CLXXII. On the day appointed for the hearing of the suit, or on some other day to which the hearing may be

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ing of the suit in open Court.

adjourned, the evidence of the witnesses in attendance shall be taken orally in open court, in the presence and hearing, and under the personal direction and superintendence of the judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the court, by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the judge and of the witness, and also in the presence of the parties to the suit or their pleaders, or such of them as are in attendance, and shall, if necessary, be corrected, and shall be signed by the judge.

In what form evidence shall be taken in appealable cases.

In what case deposition to be interpreted.

If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given.

When evidence may be taken in English.

Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the judge may so take it down in his own hand.

Objection made to questions.

It shall be in the discretion of the court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it. If any question put to a witness be objected to by either of the parties or their pleaders, and the court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the court upon the objection.

Memorandum of substance of the evidence to be made by judges as each witness is examined.

The court shall record such remarks as it may think material respecting the demeanor of the witness while under examination. In cases in which the evidence is not taken down in writing by the judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the judge with his own hand, and shall accompany the record.

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In cases in which an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the judge with his own hand, and shall form part of the record. If the judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable, shall cause such memorandum to be made in writing from his dictation in open court, and shall sign the same, and such memorandum shall form part of the record.

In what form evidence shall be taken in cases not appealable.

If judge be unable to make a memorandum of the evidence, reason of inability to be recorded.

CLXXIII. If a witness be about to leave the jurisdiction of the court, or other good and sufficient cause can be shown to the satisfaction of the court why his examination should be taken immediately, it shall be competent to the court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner hereinbefore prescribed; and the deposition so taken down may be read in evidence at any hearing of the suit.

A witness may for sufficient cause be examined immediately.

CLXXIV. All witnesses shall be examined upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

Witness to be examined upon oath or affirmation, or according to the law for the time being in force.

Of Commissions to examine absent Witnesses and make local enquiries.

CLXXV. When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the court is held, or who is unable from sickness or infirmity to attend before the court to be personally examined, or is a person exempted by rank or sex from personal appearance in court; the court may of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness,

Cases in which Court may issue a commission to examine witnesses.

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order a commission to issue for the examination of such witness on interrogatories or otherwise; and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just.

When the witness resides within the Court's jurisdiction.

If the witness be resident within the jurisdiction of the court issuing the commission, the commission may be issued to any officer of the court, or to any subordinate court, or to any other person or persons whom the court issuing the commission may think proper to appoint.

When the witness resides beyond the Court's jurisdiction and not within the Supreme Court's jurisdiction, but within the jurisdiction of the Sudder Court.

If the witness be resident at some place which is beyond the jurisdiction of the court issuing the commission, and not within the local jurisdiction of Her Majesty's supreme court, but within the jurisdiction of the sudder court, the commission shall ordinarily be issued to the court within whose jurisdiction the witness may reside, and which can most conveniently execute the same; but under special circumstances, the commission may be issued to any other person or persons whom the court issuing the commission may think proper to appoint.

When the witness is within the local jurisdiction of the Supreme Court.

CLXXVI. If the witness be resident within the local jurisdiction of Her Majesty's supreme court, the commission shall ordinarily be issued to the Court of Small Causes held under Act IX. of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*), but may, under special circumstances, be directed to any person or persons whom the court issuing the commission may think proper to appoint.

When the witness is not within the jurisdiction of the Sudder Court or the Supreme Court, but within the British territories or the territories of any Native Prince or State in alliance with the British Government.

CLXXVII. When the evidence of a witness is required who is resident at some place not within the jurisdiction of the sudder court or of Her Majesty's supreme court, but within the British territories of India, or within the territories of a native prince or state in alliance with the British Government, the court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion or on the representation of any of the parties to the suit, issue a commission for the examination of the witness; provided that, if the suit be pending in any court subordinate to the principal civil court of a district, such subordinate court shall not issue the commission, but the principal civil court of the

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district may issue the commission, on the application of the subordinate court.

When the witness is beyond the said territories and not within the territories of any Native Prince or State in alliance with the British Government.

CLXXVIII. When the evidence of a witness is required who is resident at some place beyond the said territories and not within the territories of a native prince or state in alliance with the British Government, the sudder court, if the suit in which the evidence of the witness is required be pending in that court, and the court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a commission to examine the witness; if the suit be not pending in the sudder court, that court may issue the commission on the application of the court in which the suit is pending. In all such cases, the commission may be issued to any person or persons whom the sudder court may think proper to appoint.

Commission to be returned with the depositions of the witnesses.

CLXXIX. After the commission has been duly executed, it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the court out of which the commission issued, unless otherwise directed by the order for issuing the commission, in which case it shall be returned in terms of such order, and the commission and the return thereto, and the deposition of the witness who may have been examined under such commission, shall in all cases form part of the record of the suit. But no deposition taken under a commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the court is held, or exempted by reason of rank or sex from personal appearance in court, or unless the court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

When depositions may be read in evidence.

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Commission for local investigations.

CLXXX. In any suit or other judicial proceeding in which the court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the court may issue a commission to an officer of the court appointed to execute such commissions, or, if there be no such officer, to any suitable person, directing him to make such investigation and to report thereon to the court. In all such cases, unless otherwise directed by the order of appointment, the commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of enquiry; and persons not attending on the requisition of the commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the report of the commissioner, as they would incur for the same offences in suits tried before the court. The commissioner, after such local inspection as he may deem necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed with his name, to the court. The report and depositions shall be taken as evidence in the suit, and shall form part of the record; but it shall be competent to the court, or to the parties to the suit, or any of them, with the permission of the court, to examine the commissioner personally in open court, touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation.

The report and depositions to be taken as evidence in the suit, but the commissioner may be examined in person.

A commissioner may be appointed to investigate and adjust accounts.

CLXXXI. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the court to appoint such officer or other person as aforesaid, to be a commissioner for the purpose of making such investigation or adjustment, and to

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direct that the parties or their attorneys or pleaders shall attend upon the commissioner during such investigation or adjustment. In all such cases, the court shall furnish the commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the enquiry or also to report his own opinion on the point referred for his investigation. The proceedings of the commissioner shall be received in evidence in the case, unless the court may have reason to be dissatisfied with them; in which case the court shall make such further enquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

In cases of local investigation or investigation into accounts, expenses of commission to be paid into Court before issue thereof.

CLXXXII. Whenever a commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the court, before issuing the commission, may order such sum as may be thought reasonable for the expenses of the commission, to be paid into court by the party at whose instance or for whose benefit the commission is issued.

Of Judgment and Decree.

When judgment is to be pronounced.

CLXXXIII. When the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the court shall pronounce its judgment. The judgment shall be pronounced in open court, either immediately or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment to be written in the vernacular language of the judge. Proviso.

CLXXXIV. The judgment shall be written in the vernacular language of the judge. Provided that if the vernacular language of the judge be not English, and the judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

Judgment what to contain. Judgment to be translated.

CLXXXV. The judgment shall contain the point or points for determination, the decision thereupon, and the reason for the decision, and shall be dated and signed by the

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judge in open court at the time of pronouncing it. Whenever the judgment is written in any other language than that which is in ordinary use in the court, the judgment shall be translated into the language in ordinary use in the court, and the translation shall also be signed by the judge.

Court to state its decision on each issue. Proviso.

CLXXXVI. In all suits in which issues have been framed, the court shall state its finding or decision on each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Judgment to direct by whom costs are to be paid.

CLXXXVII. The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the court shall have full power to award and apportion costs in any manner it may deem proper.

What is included under the denomination of costs.

CLXXXVIII. Under the denomination of costs, are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees of pleaders, charges of witnesses, and expenses of commissioners either in taking evidence or in local investigations, or in investigations into accounts.

Decree.

CLXXXIX. The decree shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit, and by what parties and in what proportions they are to be paid, and shall be signed by the judge and sealed with the seal of the court.

Decree for the recovery of a portion of immovable property.

CXC. When the suit is for land or other immovable property with specified boundaries, if the decree be for the recovery of a portion only of such property, it shall specify the boundaries of the land or property adjudged.

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CXCI. When the suit is for movable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had. Decree for the delivery of movable property.

CXCII. When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the court, with the consent of the plaintiff, may decree the specific performance of the contract within a time to be fixed by the court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not performed. Decree for damages for breach of contract.

CXCIII. Repealed by Sec. I. Act XXIII of 1861.

CXCIV. In all decrees for the payment of money, the court may for any sufficient reason order that the amount shall be paid by instalments with or without interest. Payment by instalments.

CXCV. If the defendant shall have been allowed to set off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The decree of the court with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff. If set-off be allowed. Effect of decree.

CXCVI. When the suit is for land or other property paying rent, the court may provide in the decree for the payment of mesne profits or rent on such land or other property from the date of the suit until the date of delivery of possession to the decree-holder, with interest thereupon at such rate as the court may think proper. When the suit is for land, the Court may provide in the decree for payment of mesne profits with interest.

CXCVII. When the suit is for land and for mesne profits which have accrued thereon during a period prior to the date of suit, and the amount of such profit is disputed, the court may either determine the amount prior to passing a decree for the land, or may pass a decree for the land and reserve the enquiry into the amount of mesne profits for the execution of the decree according as may appear most convenient. Court may determine amount of mesne profits prior to passing decree, or may reserve enquiry.

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Certified copies of the decree and judgment to be furnished.

CXCVIII. Certified copies of the decree and judgment shall be furnished to the parties or their pleaders on application to the court, and on the production of the necessary stamps where stamps are required by any law for the time being in force. The application may be made either orally or by writing on unstamped paper.

CHAPTER IV.

EXECUTION OF DECREES.

Decree for immovable property.

CXCIX. If the decree be for land or other immovable property, the same shall be delivered over to the party to whom it shall have been adjudged.

Decree for movable property, performance of contract, or alternative.

CC. If the decree be for any specific movable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by the seizure, if practicable, of the specific movable, and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the court, or by both imprisonment and attachment if necessary; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money.

Decree for money.

CCI. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this chapter against a defendant. When the decree is against Government or against any officer acting on behalf of Government, if the officer whose duty it is to satisfy the decree neglect or refuse to satisfy the same, the court shall report the case through the sudder court for the orders of Government, and execution shall not issue on the decree unless the same shall remain unsatisfied for the space of three months from the date of such report.

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CCII. If the decree be for the execution of a conveyance or for the endorsement of a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the court, for execution upon the proper stamp (if any is required by law), and the signature thereof by the judge shall have the same effect as the execution or endorsement thereof by the party ordered to execute. Decrees for execution of conveyances or endorsement of negotiable instruments.

CCIII. If the decree be against a party as the representative of a deceased person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or, if no such property can be found and the defendant fail to satisfy the court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against the defendant personally. Decree against representatives of deceased persons.

CCIV. Whenever a person has become liable as security for the performance of a decree or of any part thereof, the decree may be executed against such person to the extent to which he has rendered himself liable, in the same manner as a decree may be enforced against a defendant. Decree against sureties.

CCV. The following property is liable to attachment and sale in execution of a decree, namely: lands, houses, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint-stock of any railway, banking, or other public company or corporation, and all other property whatsoever, movable or immovable, belonging to the defendant, and whether the same be held in his own name or by another person in trust for him, or on his behalf. What property liable to attachment and sale in execution of a decree.

CCVI. All monies payable under a decree shall be paid into the court, whose duty it is to execute the decree, unless Payment of monies under decrees, &c.

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such court or the court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the court unless such adjustment be made through the court or be certified to the court by the person in whose favour the decree has been made or to whom it has been transferred.

Adjustment of decree to be made through the Court.

Application for Execution.

CCVII. When any party, in whose favour a decree has been made is desirous of enforcing the same, he shall apply to the court whose duty it is to execute the decree, either in person or through his pleader in the suit, or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make the application, if the court shall see sufficient cause for allowing him or them to make such application; and the court shall in such case pass such order as it may deem necessary for protecting the interests of the other decree-holders.

Application for execution how to be made.

CCVIII. If a decree shall be transferred by assignment or by operation of law from the original decree-holder to any other person, application for the execution of the decree may be made by the person to whom it shall have been so transferred or his pleader; and if the court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.

Application by whom to be made, if decree be transferred from original decree-holder to another person.

CCIX. If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both decrees.

Cross-decrees.

The above rules shall apply to decrees sent to a court for execution as well as to decrees in the same court.

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Whenever a suit shall be pending in any court against the holder of a decree of such court, by the person or persons against whom the decree was passed, the court may, if it appear just and reasonable to do so, stay execution on the decree either absolutely or on such terms as it may think just, until a decree shall be passed in the pending suit.

If the person against whom a decree is made shall die before execution, application may be made against his legal representative or estate.

CCX. If any person against whom a decree has been made shall die before execution has been fully had thereon, application for execution thereof may be made against the legal representative or the estate of the person so dying as aforesaid; and if the court shall think proper to grant such application, the decree may be executed accordingly.

Decree how to be executed against legal representatives.

CCXI. If the decree be ordered to be executed against the legal representative, it shall be executed in the manner provided in Section CCIII for the execution of a decree for money to be paid out of the property of a deceased person.

Form of application for execution of a decree.

CCXII. The application for execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely, the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, or other relief granted by the decree; the amount of costs, if any were awarded; the name of the person against whom the enforcement of the decree is sought; and the mode in which the assistance of the court is required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person named, or attachment of his property, or otherwise, as the case may be.

Further particulars when the application is for an attachment of immovable property.

CCXIII. When the application is for an attachment of any land or other immovable property belonging to the defendant, it shall be accompanied with an inventory or list of such property, containing such a description of the property as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to Government or any portion of such

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estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the revenue of such estate, and the names and (where registered) the shares of the registered proprietors.

The application for an attachment of movable property may be general, or may be accompanied with an inventory of the property to be attached.

CCXIV. Where the application is for attachment of the defendant's movable property or any part thereof, it may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description thereof; or the applicant may apply for a general attachment of the defendant's movable property wheresoever the same can be found, to the amount of the judgment and costs.

CCXV. Repealed by Sec. I. Act XXIII. of 1861.

Measures required in certain cases preliminary to the issue of the Warrant.

In certain special cases, notice to show cause why the decree should not be executed shall be issued.

CCXVI. If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be applied for against the heir or representative of an original party to the suit, the court shall issue a notice to the party against whom execution may be applied for, requiring him to show cause, within a limited period to be fixed by the court, why the decree should not be executed against him. Provided that no such notice shall be necessary in consequence of an interval of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution; and provided further that no such notice shall be necessary in consequence of the application being against an heir or representative, if upon a previous application for execution against the same person, the court shall have ordered execution to issue against him.

Proviso.

Procedure after issue of notice.

CCXVII. When such notice is issued, if the party shall not attend in person or by a pleader, or shall not show sufficient cause to the satisfaction of the court why the decree should not be forthwith executed, the court shall order it to be executed accordingly. If the party shall attend in person

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or by a pleader, and shall offer any objection to the enforcement of the decree, the court shall pass such order as in the circumstances of the case may appear to be just and proper.

Application for a general attachment of movable property.

CCXVIII. Where the application is for a general attachment of the movable property of the defendant, it shall be competent to the court, if it shall think proper, before issuing an order for such attachment, to require the applicant to give security to the satisfaction of the court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

Before granting order, Court may make certain enquiries as to the property to be attached.

CCXIX. Before granting the order for a general attachment, or at the instance of the plaintiff at any time after judgment and before complete execution of the decree, the court may summon the person against whom the application is made, and examine him as to the property liable to be seized in satisfaction of the judgment. The court may also, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it may think necessary, and examine him in respect to such property, and may require the person summoned to produce all deeds and documents in his possession or power relating to such property.

Rules applicable to the summoning and examination parties and witnesses after judgment.

CCXX. In all cases in which a summons may be issued for the attendance of a party to a suit or any other person at any time after judgment, the rules applicable to the summoning and examination of parties and witnesses after issues recorded, shall apply to the party or witnesses so summoned.

Issue of the Warrant.

Warrant when to issue.

CCXXI. When all necessary preliminary measures have been taken, where any such are required, the court, unless it see cause to the contrary, shall issue the proper warrants for the execution of the decree.

Latest day of execution to be written in warrant and time and manner of execution to be endorsed.

CCXXII. Every warrant for the execution of a decree shall bear the date of the day on which it is issued, and shall be signed by the judge and sealed with the seal of the court, and delivered to the nazir or other proper officer of the court. A day shall be specified in the warrant on or

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before which it must be executed, and the nazir or other proper officer shall endorse upon the warrant the day and the manner in which it was executed, or if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the court from which it issued.

Of the execution of Decrees for Immovable Property.

How immovable property is to be delivered when in the occupancy of a defendant or of some person under him.

CCXXIII. If the decree be for a house, land, or other immovable property in the occupancy of a defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit, the court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and if need be, by removing any person who may refuse to vacate the same.

How to be delivered when in the occupancy of ryot.

CCXXIV. If the decree be for land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the court shall order delivery thereof to be made by affixing a copy of the warrant in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, the substance of the decree in regard to the property.

Division of estate or separation of share how to be made.

CCXXV. If the decree be for the division of an estate or for the separate possession of a share of an undivided estate paying revenue to Government, the division of the estate or the separation of the share shall be made by the collector under the orders of the court according to the rules in force for the partition of an estate paying revenue to Government.

Obstruction to execution of decree for immovable property.

CCXXVI. If in the execution of a decree for land or other immovable property, the officer executing the same shall be resisted or obstructed by any person, the person in whose favor such decree was made may apply to the court at any time within one month from the time of such resistance or obstruction. The court shall fix a day for investiga-

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ting the complaint, and shall summon the party against whom the complaint is made to answer the same.

Obstruction by defendant.

CCXXVII. If it shall appear to the satisfaction of the court that the obstruction or resistance was occasioned by the defendant or by some person at his instigation, on the ground that the land or other immovable property is not included in the decree, or on any other ground, the court shall enquire into the matter of the complaint, and pass such order as may be proper under the circumstances of the case.

How defendant may be dealt with if he persist in obstructing the complainant.

CCXXVIII. If the court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the court may, at the instance of the plaintiff and without prejudice to any proceedings to which such defendant or other person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, commit the defendant or such other person to close custody for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

Obstruction by a *bonâ fide* claimant other than the defendant.

CCXXIX. If it shall appear to the satisfaction of the court that the resistance or obstruction to the execution of the decree has been occasioned by any person, other than the defendant, claiming *bonâ fide* to be in possession of the property on his own account or on account of some other person than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant, and the court shall, without prejudice to any proceedings to which the claimant may be liable under any law for the time being in force for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of this Act, and shall pass such order for staying execution of

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the decree, or executing the same, as it may deem proper in the circumstances of the case.

Procedure in certain cases if person dispossessed of immovable property dispute the right of decree-holder to be put into possession of such property.

CCXXX. If any person other than the defendant shall be dispossessed of any land or other immovable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some other person than the defendant, and that he was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the court,* and if, after examining the applicant, it shall appear to the court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the decree-holder as defendant, and the court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

Appeal from decision under the last two sections.

CCXXXI. The decision passed by the court under either of the last two sections shall be of the same force as a decree in an ordinary suit, and shall be subject to appeal under the rules applicable to appeals from decrees; and no fresh suit shall be entertained in any court between the same party or parties claiming under them in respect of the same cause of action.

Of the Execution of Decrees for Money by Attachment of Property.

Attachment of property in execution of decree for money, to be as follows.

CCXXXII. If the decree be for money, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the court shall cause the property to be attached in the manner following.

Attachment of movable property in possession of defendant, by seizure.

CCXXXIII. Where the property shall consist of goods, chattels, or other movable property in the possession of the defendant, the attachment shall be made by actual seizure, and the nazir or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof.

* See Act IX. of 1871.

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CCXXXIV. Where the property shall consist of goods, chattels, or other movable property to which the defendant is entitled subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

Attachment by prohibitory order of movable property, to which defendant is entitled subject to a lien.

CCXXXV. Where the property shall consist of lands, houses, or other immovable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise.

Attachment of immovable property by prohibitory order.

CCXXXVI. Where the property shall consist of debts not being negotiable instruments, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person whomsoever, until the further order of the court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares, or receiving payment of any dividends thereof, and the manager, secretary, or other proper officer of the company or corporation, from permitting any such transfer or making any such payment until such further order.

Attachment of debts not being negotiable instruments, and of shares in public companies, &c., by prohibitory order.

CCXXXVII. Where the property shall consist of money, or of any security, in deposit in any court of justice or in the hands of any officer of Government, which is or may become payable to the defendant or on his behalf, the attachment shall be made by a notice to such court or officer, requesting that the money or security may be held subject to the further order of the court by which the notice may be issued. Provided that, if such money or security is in deposit in any court of justice, any question of title or priority which may arise between the decree-holder and any other person not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment, or otherwise, shall be determined by the court in which such money or security is in deposit.

Attachment of money or securities in deposit in a court of justice or with a Government officer, by notice.

Proviso.

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Attachment of negotiable instruments by seizure.

CCXXXVIII. Where the property shall consist of a negotiable instrument, the attachment shall be made by actual seizure, and the nazir or other officer shall bring the same into court, and such instrument shall be held subject to the further orders of the court.

When the attachment is by prohibitory order, how the order is to be made known.

CCXXXIX. In the case of goods, chattels, or other movable property not in the possession of the defendant, the written order shall be fixed up in some conspicuous part of the court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property. In the case of lands, houses, or other immovable property, the written order shall be read aloud at some place on or adjacent to such lands, houses, or other property, and shall be fixed up in some conspicuous part of the court-house; and when the property is land or any interest in land, the written order shall also be fixed up in the office of the collector of the zillah in which the land may be situated. In the case of debts, the written order shall be fixed up in some conspicuous part of the court-house, and copies of the written order shall be delivered or sent registered by post to each individual debtor. And in the case of shares in the capital or joint-stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the court-house, and a copy of the order shall be delivered or sent registered by post to the manager, secretary, or other proper officer of the company or corporation.

Any private alienation of property after attachment to be null and void.

CCXL. After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends or shares to the defendant during the continuance of the attachment, shall be null and void.

Payment by a debtor who has been prohibited from making payment to his creditor

CCXLI. In every case in which a debtor shall be prohibited from making payment of his debt to the creditor, he may pay the amount into court, and such payment shall have the same effect as payment to the party entitled to receive the debt.

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CCXLII. In all cases of attachment under the preceding sections, it shall be competent to the court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank-notes, or a sufficient part thereof, shall be paid over to the party applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank-notes, so far as may be necessary for the satisfaction of the decree, shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.

The Court may direct money or bank notes to be paid to the plaintiff.

Or other attached property be sold, and proceeds to be paid to him.

CCXLIII. When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immovable property, it shall be competent to the court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immovable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment debtor can satisfy the court that there is reasonable ground to believe that the amount of judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the judgment debtor, it shall be competent to the court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the court may direct.

When the property attached consists of debts or immovable property, a manager may be appointed.

Court may postpone sale of land if satisfied that amount of judgment may be raised by mortgage, &c.

Manager to render accounts.

CCXLIV. When in any district where land paying rent to Government is ordinarily sold by the collector, as provided in Section CCXLVIII, the property attached shall consist of any such land, or of a share in any such land, if the collector shall represent to the court that the public

When Court may authorize Collectors to stay public sale of land.

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sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the court may authorize the collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the collector, instead of proceeding to a public sale of the land or share.

On security being given.

Order for withdrawal of attachment after satisfaction of the decree.

CCXLV. If the amount decreed with costs, and all charges and expenses which may be incurred by the attachment be paid into court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it and shall deposit in court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

Of Claims to attached Property.

How claims and objections to sale of attached property are to be investigated.

CCXLVI. In the event of any claim being preferred to, or objection offered against the sale of lands or any other immovable or movable property which may have been attached in execution of a decree or under any order for attachment passed before judgment, as not liable to be sold in execution of a decree against the defendant, the court shall, subject to the proviso contained in the next succeeding section, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant as are contained in Section CCXX. And if it shall appear to the satisfaction of the court that the land or other immovable or movable property was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account or

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as his own property, but on account of or in trust for some other person, the court shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the court that the land or other immovable or movable property was in possession of the party against whom execution is sought, as his own property, and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of ryots or cultivators or other persons paying rent to him at the time when the property was attached, the court shall disallow the claim. The order which may be passed by the court under this section shall not be subject to appeal, but the party against whom the order may be given shall be at liberty to bring a suit to establish his right.*

Claims and objections should be preferred at the earliest opportunity.

CCXLVII. The claim or objection shall be made at the earliest opportunity to the court which shall have ordered the attachment; and if the property to which the claim or objection applies, have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding section. Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice. The order disallowing the investigation shall not be subject to appeal, and the claimant shall be left to prosecute his claim by a regular suit.

Of Sales in Execution of Decrees.

Sales to be by public auction.

CCXLVIII. Sales in execution of decrees shall be conducted by an officer of the court or by any other person whom the court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned. Provided that if the property to be sold shall consist of negotiable securities or of shares in any railway, banking, or other public company or corporation, it shall be competent to the court instead of directing the sale to be made by public auction, to authorize the sale of such securities or shares through a broker at the market-rate of the day. If the property to be sold shall be land paying revenue to Govern-

Exception as to negotiable securities and shares in public companies.

Sale by Collector of lands paying revenue to Government.

* See Act IX. of 1871.

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ment, and the Government shall so direct, the sale shall be conducted by the collector on the requisition of the court.

Notification of sales by public auction.

Time of sale.

CCXLIX. In all cases of intended sale by public auction, whether of movable or immovable property, in execution of a decree, a proclamation of the intended sale, specifying the time and place of sale, the property to be sold, the revenue assessed upon the estate when the property to be sold is an estate or a part of an estate paying revenue to Government, and the amount for the recovery of which the sale is ordered, together with any other particulars that the court may think necessary, shall be made in the current language of the district. The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein. Such proclamation shall be made on the spot where the property is attached by beat of drum, or in such other mode as may be customary; and a written notification to the same effect shall be affixed in the court-house of the judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land, the written notification shall also be affixed in the office of the collector of the district in which such land is situate, and in the court-house of the principal civil court of the district where the court which ordered the sale is subordinate to such court. The sale shall not take place until after the expiration of at least thirty in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the notification shall have been affixed in the court-house of the judge ordering the sale.

The process for attachment and sale may in certain cases be issued simultaneously.

CCL. The usual process for attachment and sale when the property to be attached consists of goods, chattels, or other personal estate other than debts, may be issued either successively or simultaneously, as the court directing the sale may in each instance think proper.

Mode of payment on sale of movable property.

CCLI. In all cases of sale of movable property, the price of every lot shall be paid for at the time of sale, or as soon after as the officer holding the sale shall direct, and in default

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of such payment, the property shall forthwith be again put up and sold. On payment of the purchase money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

CCLII. No irregularity in the sale of movable property under an execution shall vitiate the sale; but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in court. Irregularity not to vitiate sale of movable property, but any person injured may recover damages by suit.

CCLIII. In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. Deposit by purchaser in case of sale of immovable property.

CCLIV. The full amount of purchase money shall be made good by the purchaser before sunset on the fifteenth day from that on which the sale of the property took place, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day; and in default of payment within such period, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of court. When full amount of purchase money to be made good. Procedure on default. Defaulting purchaser answerable for loss by resale.

CCLV. Every re-sale of immovable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales. Notification on resale of immovable property.

CCLVI. No sale of immovable property shall become absolute until the sale has been confirmed by the court. Application* may be made to the court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity, unless the applicant shall prove Confirmation of sale.

* See Act IX of 1871.

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to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

CCLVII. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the court shall pass an order confirming the sale; and in like manner, if such application be made, and if the objection be allowed, the court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final; if the objection be disallowed, the order confirming the sale shall be open to appeal; and such order, unless appealed from, and if appealed from, then the order passed on the appeal, shall be final; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

When the order to set aside a sale shall be open to appeal.

If the sale be set aside, price to be returned to purchaser.

CCLVIII. Whenever a sale of immovable property is set aside, the purchaser shall be entitled to receive back his purchase money with or without interest, in such manner as it may appear proper to the court to direct in each instance.

Certificate to be granted to the purchasers of land.

CCLIX. After a sale of immovable property shall have become absolute in manner aforesaid, the court shall grant a certificate to the person who may have been declared the purcharser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

Certificate to state the name of actual purchaser.

CCLX. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser 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.

Delivery of movable property in the possession of defendant.

CCLXI. Where the property sold shall consist of goods, chattels, or other movable property in the possession of the defendant, or to the immediate possession of which the defendant is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

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CCLXII. Where the property sold shall consist of goods, chattels, or other movable property to which the defendant is entitled subject to a lien or right of any person to thei mediate possession thereof, the delivery to the purchaser shall as far as practicable, be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

Delivery of movable property to which defendant is entitled subject to lien.

CCLXIII. If the property sold shall consist of a house, land, or other immovable property in the occupancy of a defendant, or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the court shall order delivery thereof to be made by putting the party to whom the house, land, or other immovable property may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immovable property in the occupancy of defendants, &c.

CCLXIV. If the property sold shall consist of land or other immovable property in the occupancy of ryots or other persons entitled to occupy the same, the court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land or other immovable property, and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

Delivery of immovable property in the occupancy of ryots, &c.

CCLXV. Where the property sold shall consist of debts not being negotiable instruments, or of shares in any railway, banking, or other public company or corporation, the delivery thereof shall be by a written order of the court prohibiting the creditor from receiving the debts and the debtor from making payment thereof to any person or persons except the purchaser, or prohibiting the person in whose name the shares may be standing, from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary, or other proper officer of the company or corporation

Delivery of debts not being negotiable instruments, and of shares in public companies.

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from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of negotiable securities of which actual seizure has been made.

CCLXVI. Where the property sold shall consist of negotiable securities of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

Transfer of securities and shares.

CCLXVII. If the endorsement or conveyance of the party in whose name any negotiable security or any share in a public company or corporation is standing, shall be required to transfer the same, the judge may endorse the security or the certificate of the share, or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form or to the like effect—"A. B. by C. D. Judge of the court of (*or as the case may be*); in a suit by E. F. *versus* A. B." Until the transfer of such security or share, the judge may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same; and any endorsement made or document executed or receipts signed as aforesaid, shall be as valid and effectual for all purposes, as if the same had been made or executed or signed by the party himself.

Resisting or obstructing purchasers in obtaining possession of property.

CCLXVIII. If the purchaser of any immovable property sold in execution of a decree shall be resisted or obstructed in obtaining possession of the property, the provisions contained in Sections CCXXVI, CCXXVII, and CCXXVIII, relating to resistance or obstruction to a party in whose favor a suit has been decreed in obtaining possession of the property adjudged to him, shall be applicable in the case of such resistance or obstruction.

Obstruction by claimants other than defendants.

CCLXIX. If it shall appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid shall be dispossessed, the court, on the complaint of the purchaser, or of such person claiming as aforesaid,* shall enquire into the matter of the complaint and pass such order

* See Act IX of 1871.

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as may be proper in the circumstances of the case. The order shall not be subject to appeal, but the party against whom it is given shall be at liberty to bring a suit to establish his right at any time within one year from the date thereof.

Attaching creditor to be first paid out of property attached.

CCLXX. Whenever property is sold in execution of a decree, the person on whose application such property was attached shall be entitled to be first paid out of the proceeds thereof, notwithstanding subsequent attachment of the same property by another party in execution of a prior decree.

Surplus to be rateably distributed among decree-holders who have taken out execution prior to order for distribution.

CCLXXI. If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who prior to the order for such distribution may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

Proviso where property is sold subject to a mortgage.

Court may on application order another decree holder to be satisfied out of proceeds of property attached under a decree obtained fraudulently.

CCLXXII. If it shall appear to the court, upon the application of a decree-holder, that any other decree under which property has been attached was obtained by fraud or other improper means, the court may order that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose if such other decree be a decree of that court, or, if it be a decree of another court, may stay the proceedings to enable the applicant to obtain a similar order from the court by which the decree was made.

Of Arrest in execution of Decrees for Money.

On what grounds application for discharge may be made.

CCLXXIII. Any person arrested under a warrant in execution of a decree for money may, on being brought before the court, apply for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, or, if possessed of any property, that he is willing to place whatever property he possesses at the disposal of the court. The application shall contain a full account of all property of whatever nature belonging to the applicant,

Form of application.

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whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade), and of the places respectively where such property is to be found, or shall state that, with the exceptions above-mentioned, the applicant is not possessed of any property, and the application shall be subscribed and verified by the applicant in the manner herein-before prescribed for subscribing and verifying plaints.

Verification.

CCLXXIV. Repealed by Sec. I, Act XXIII. of 1861.

Defendant liable to be again arrested if proved guilty of fraudulent concealment of property, &c.

CCLXXV. The discharge of the defendant under the last preceding section shall not protect him from being arrested again and imprisoned if it should be shown that, in the application made by him, he had been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust, or had fraudulently concealed, transferred, or removed any property, or had committed any other act of bad faith, nor shall such discharge exempt from attachment and sale any property then in the possession of the defendant, or of which he may afterwards become possessed.

Of the execution of Decrees by Imprisonment.

Subsistence money of a defendant in gaol how fixed and furnished.

CCLXXVI. When a defendant is committed to prison in execution of a decree, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding four annas per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the court or of the gaol where the defendant may be in custody, by monthly payments in advance, before the first day of each month: the first payment to be made for such portion of the current month as may remain unexpired before the defendant is committed to prison.

Court may vary the allowance in case of illness or for other special cause.

CCLXXVII. The court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as shall appear necessary

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The order fixing such allowance may from time to time be revised and altered on due cause being shown.

Release of defendant.

CCLXXVIII. A defendant shall be released at any time on the decree being fully satisfied, or at the request of the person at whose instance he may have been imprisoned, or on such person omitting to pay the allowance as above directed. No person shall be imprisoned on account of a decree for a longer period than two years, or for a longer period than six months if the decree be for the payment of money not exceeding five hundred rupees, or for a longer period than three months if the decree be for the payment of money not exceeding fifty rupees.

Imprisonment not to be longer than two years.

Six months if decree for money not exceeding 500 Rs.

Three months if not exceeding 50 Rs.

Subsistence-money to be added to amount of decree.

CCLXXIX. Sums disbursed by a plaintiff for the subsistence of a defendant in gaol, shall be added to the costs of the decree and shall be recoverable by the attachment and sale of the property of the defendant under the foregoing rules; but the defendant shall not be detained in custody or arrested on account of any sum so disbursed.

Application may be made for discharge on a surrender of the whole of the debtor's property.

CCLXXX. Any person in confinement under a decree may apply to the court for his discharge. The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family, and the necessary implements of his trade,) and of the places respectively where such property is to be found; and such application shall be subscribed and verified by the applicant in the manner hereinbefore provided for subscribing and verifying plaints.

Procedure on such application.

CCLXXXI. On such application being made, the court shall cause the plaintiff to be furnished with a copy of the account of the defendant's property, and shall fix a reasonable period within which the plaintiff may cause the whole or any part of such property to be attached and sold, or may make proof that the defendant, for the purpose of procuring his discharge without satisfying the decree, has wilfully concealed property, or his right or interest therein, or fraudu-

Defendant to be discharged on plaintiff

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failing to prove fraud or concealment by defendant.

lently transferred or removed property, or committed any other act of bad faith. If within such period the plaintiff shall fail to make such proof, the court shall cause the defendant to be set at liberty. If the plaintiff shall within the time specified or at any subsequent period prove to the satisfaction of the court that the defendant has been guilty of any of the acts above-mentioned, the court shall at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if it shall think proper, send the defendant to the magistrate to be dealt with according to law.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally.

Though the defendant be discharged, his property is liable for the decree.

CCLXXXII. A defendant once discharged shall not again be imprisoned on account of the same decree, except under the operation of the last preceding section, but his property shall continue liable, under the ordinary rules, to attachment and sale, until the decree shall be fully satisfied, unless the decree shall be for a sum less than one hundred rupees on account of a transaction bearing date subsequent to the passing of this Act. When the decree shall be for a sum less than one hundred rupees, and on account of a transaction bearing date as above, the court may declare a defendant who shall be discharged as aforesaid absolved from further liability under that decree.

CCLXXXIII. Repealed by Sec. I, Act XXIII. of 1861.

Of Execution of a decree out of the jurisdiction of the court by which it was passed.

How a decree of one court may be executed within the jurisdiction of another court.

CCLXXXIV. A decree of any civil court within any part of the British territories in India, or established by the authority of the Governor General of India in Council in the territories of any foreign prince or state, which cannot be executed within the jurisdiction of the court whose duty it is to execute the same, may be executed within the jurisdiction of any other such court in the manner following.

Application for such execution.

CCLXXXV. The plaintiff in such case may apply to the court whose duty it is to execute the decree, to transmit a

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copy thereof, together with a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said court, and a copy of any order for execution of such decree that may have been passed, to the court by which the applicant may wish the decree to be executed.

Copy of decree and order for execution to be transmitted.

CCLXXXVI. The court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared; and the same, after being signed by the judge and sealed with the seal of the court, shall be transmitted to the court indicated by the applicant if that court be within the same district, otherwise to the principal civil court of original jurisdiction in the district in which the applicant may wish the decree to be executed; and the court to which such copies and certificates are transmitted, shall cause the same to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any court, or of the signature of any judge, unless it shall, under any peculiar circumstances to be specified in an order, require such proof.

Decree or order transmitted, to be executed as that of the Court.

CCLXXXVII. The copy of any decree, or of any order for execution, when filed in the court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall, for such purpose, have the same effect as a decree or order for execution made by such court, and may, if the court be the principal civil court of original jurisdiction in the district, be executed by such court, or any court subordinate thereto, to which it may entrust the execution of the same.

Execution how to be endorsed by the Court applied to.

CCLXXXVIII. When application shall be made to any court to execute the decree of any other court as aforesaid, the court to which the application shall be made or referred shall proceed to execute the same according to its own rules in the like cases; provided that such court shall have no power to enquire into the validity of the decree unless it appear upon the face of the decree that the court by which it was made had no jurisdiction to make the same.

Wrongful acts or irregularities in exe-

CCLXXXIX. The court to which such application is made or referred for execution as aforesaid, shall take cog-

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cuting decree to be punished by Court applied to.

nizance of and punish all wrongful acts or irregularities done or committed in executing such decree; and all persons disobeying or obstructing the execution of such decree, shall be punishable by such court in the same manner as if the decree had been made by such court.

Court applied to may in certain cases stay execution or order restitution of property or discharge of defendant.

CCXC. The court to which such application is made may, upon good and sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or the execution thereof, which such court of first instance or court of appeal might have made if execution had been issued by such court of first instance, or if application for execution had been made to such court; and in case the property or person of the defendant shall have been seized under an execution, the court which issued the execution may order the restitution of the property or the discharge of the person of the defendant pending the result of such application.

Before staying execution, Court may require security from, or impose conditions upon defendant.

CCXCI. Before making an order to stay execution or for the restitution of property or the discharge of the defendant under the last preceding section, the court may require such security from or impose such conditions upon the defendant as it may deem reasonable.

Order of Court passing decree, or of appellate court to be binding upon Court applied to.

CCXCII. Any order of the court in which the decree was passed, or of such court of appeal as aforesaid, shall be binding upon the court to which the application for execution was made, and shall be a sufficient indemnity for all persons acting in execution of process issued by such last mentioned court.

Liability of defendant discharged, to be retaken.

CCXCIII. No discharge of a defendant under the provisions of Section CCXC shall prevent him from being retaken in execution of the decree.

What appeal from orders for execution under this Act.

CCXCIV. All orders of a court for executing the decree of another court shall be subject to the same rules, in respect to appeal, as if the decree had been originally passed by the court making such order.

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CCXCV. If, in execution of a decree, a warrant of arrest or other process is to be enforced within the limits of a garrison, cantonment, military station, or military bazar, the officer entrusted with the execution of such warrant or other process shall carry the same to the commanding officer, or in his absence to the senior officer actually present in the garrison, cantonment, station, or military bazar; and the commanding officer, or such senior officer, upon such warrant or other process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command, and delivered, according to the exigency of the warrant, to the civil officer charged with the execution thereof.

Warrant of arrest, or other process in execution of decrees, how to be enforced in military cantonments, &c.

CCCXVI. The rules contained in this chapter shall be applicable to the execution of any judicial process for the sale of property or for the payment of money which may be ordered by a civil court in any civil proceeding.

Rules contained in this chapter to be applicable to all civil process.

CHAPTER V.

OF PAUPER SUITS.

CCXCVII. A suit may be brought *in forma pauperis* in the court having jurisdiction over the claim, subject to the following rules.

Suits may be brought *in formâ pauperis*.

CCXCVIII. No pauper suit shall be brought for the recovery of any sum of money on account of damages for loss of caste, slander, abusive language, or assault.

What suit excepted.

CCXCIX. The application to the court for permission to sue *in forma pauperis* shall be by petition, which shall be written.*

Application to be by petition on stamp paper.

CCC. The petition shall contain the particulars required by Section XXVI of this Act in regard to plaints, and shall have annexed to it a schedule of any movable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

Petition what to contain.

* See Act VII of 1870.

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How to be presented.

CCCI. The petition shall be presented to the court by the petitioner in person; but if the petitioner satisfy the court that he is prevented by sickness from attending the court in person, or if the petitioner be a female, who, according to the customs and manners of the country ought not to be compelled to appear in public, the petition may be presented by the duly authorized agent who may be able to answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of petitioner, if a female, how to be taken.

Petition to be rejected if not in form.

CCCII. If the petition be not framed or presented in the manner laid down in the last two preceding sections, the court shall reject the petition.

If in form, Court how to proceed.

If presented by an agent, court may order petitioner to be examined in like manner as an absent witness.

CCCIII. If the petition be in form and duly presented, the court shall proceed to examine the petitioner, or the agent of the petitioner, as the case may be, regarding the merits of the claim and the property of the petitioner. When the petition is presented by an agent, the court may also, if it think proper, order that the petitioner be examined in the manner hereinbefore prescribed for the examination of absent witnesses.

Court may reject the application.

CCCIV. If it appear to the court upon such examination that the defendant, or the matter of the suit, is not within the jurisdiction of the court, or that the claim is barred by the Statute of Limitations, or that the allegations of the petitioner do not constitute a reasonable ground of action, or (if none of the objections above stated exist) that the petitioner has failed to show that he is not possessed of sufficient means to enable him to pay for the stamps required for the institution and prosecution of the suit, or that the petitioner has recently disposed of any property fraudulently or with a view to obtain the benefit of this chapter, the court shall refuse to allow the petitioner to sue as a pauper.

Notice to opposite party.

CCCV. If upon such examination the court shall see no reason to refuse the application on any of the grounds stated in the last preceding section, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the petitioner may ad-

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duce in proof of his pauperism, and for hearing any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner.

After a summary enquiry the court to pass a final order.

CCCVI. On the day appointed for the hearing, or as soon after as the business of the court will permit, the court shall consider any objections made by the opposite party, and shall examine any witnesses produced by either party, and make a memorandum of the substance of their evidence, and shall either allow or refuse to allow the petitioner to sue as a pauper.

Court may direct a local enquiry.

CCCVII. Previously to passing a final order in the case, the court may, if it deem fit, institute a local enquiry, in the manner laid down in Section CLXXX of this Act, regarding the property of the petitioner, or regarding the amount or value of any property claimed.

Course of proceeding to be observed if application be admitted.

CCCVIII. If the application of the petitioner be granted and numbered, it shall be registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as an ordinary suit, except that the plaintiff shall not be liable to any further stamp duty in respect of any petition, appointment of a pleader, or other proceeding connected with the suit or with the execution of any decree passed in it.

On the decision of the suit, costs how to be calculated.

CCCIX. On the decision of the suit, the court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable.

Refusal to allow to sue as a pauper, to bar any subsequent application of the like nature.

CCCX. The refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same cause of action; but the plaintiff shall be at liberty to institute a suit in the usual manner in respect of such cause of action, unless precluded by the rules for the limitation of suits.

No appeals from orders under this chapter.

CCCXI. The orders passed by the court under the provisions of this chapter shall not be subject to appeal.

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CHAPTER VI.

REFERENCE TO ARBITRATION.

Reference to arbitration on application of the parties.

CCCXII. If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the court at any time before final judgment for an order of reference.

Application how to be made.

CCCXIII. The application shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument in writing, which shall be presented to the court at the time of making the application, and shall be filed with the proceedings in the suit.

Nomination and appointment of arbitrators.

CCCXIV. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the court, the court shall appoint the arbitrator or arbitrators.

Order of reference.

CCCXV. The court shall, by an order under its seal, refer to the arbitrator or arbitrators the matters in difference in the suit which he or they may be required to determine, and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

When the reference is to two or more, the order shall provide for difference of opinion.

CCCXVI. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree, as the court may determine.

Powers of arbitrators.

CCCXVII. When a reference is made to arbitration by an order of court, the court shall issue the same process to the parties and witnesses whom the arbitrator or arbitrators or umpire may desire to have examined, as the court is authorized to issue in suits tried before it; and persons not

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attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrator or arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the representation of the arbitrator or arbitrators or umpire, as they would incur for the same offences in suits tried before the court.

Extension of time for making award.

CCCXVIII. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order from the want of the necessary evidence or information, or other good and sufficient cause, the court may from time to time enlarge the period for the delivery of the award, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to the court or to the umpire a notice in writing stating that they cannot agree. Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators or umpire, or unless the award shall have been made after the issue of an order by the court superseding the arbitration and recalling the suit.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others instead.

CCCXIX. If, in any case of reference to arbitration by the order of court, the arbitrator or arbitrators or umpire shall die, or refuse, or become incapable to act, it shall be lawful for the court to appoint a new arbitrator or arbitrators or umpire, in the place of the person or persons so dying, or refusing or becoming incapable to act. When the arbitrators are empowered by the terms of the order of reference to appoint an umpire and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the court, upon the application of the party having served such notice as aforesaid, and upon proof to its

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satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this section, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their names had been inserted in the original order of reference.

Award how to be submitted to court.

CCCXX. When an award in a suit shall be made either by the arbitrator or arbitrators, or by the umpire, it shall be submitted to the court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the suit.

Arbitrator may state special case.

CCCXXI. It shall be lawful for the arbitrator or arbitrators or umpire, upon any reference, by an order of court if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of special case for the opinion of the court.

Court may, on application, modify or correct an award in certain cases.

CCCXXII. The court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, provided such part can be separated from the other part and does not affect the decision on the matter referred; or where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision. The court may also on such application make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

And make order respecting the costs of arbitration.

In what cases court may remit the award or any of the matters referred to arbitration, for reconsideration.

CCCXXIII. In any of the following cases the court shall have power to remit the award or any of the matters referred to arbitration to the re-consideration of the same arbitrator or arbitrators or umpire, upon such terms as it may think proper (that is to say)—

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration.

If the award is so indefinite as to be incapable of execution.

If an objection to the legality of the award is apparent upon the face of the award.

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CCCXXIV. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators or umpire.* Award not to be set aside except on ground of corruption.

CCCXXV. If the court shall not see cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the court shall have refused such application, the court shall proceed to pass judgment according to the award or according to its own opinion on the special case if the award shall have been submitted to it in the form of a special case; and upon the judgment which shall be so given, decree shall follow and shall be carried into execution in the same manner as other decrees of the court. In every case in which judgment shall be given according to the award, the judgment shall be final. Judgment to be according to the award.

CCCXXVI. When any persons shall by an instrument in writing agree that any difference between them or any of them shall be referred to the arbitration of any person or persons named in the agreement or to be appointed by any court having jurisdiction in the matter to which it relates, application may be made by the parties thereto or any of them that the agreement be filed in such court. On such application being made, the court shall direct such notice to be given to any of the parties to the agreement, other than the applicants, as it may think necessary, requiring such parties to show cause, within a time to be specified, why the agreement should not be filed. The application shall be written† and shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant, if the application shall have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the agreement, the agreement shall be filed and an order of reference to arbitration shall be made thereon. The several provisions of this chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of refer- Agreement of parties to refer to arbitration may be filed in the court. Provisions of this chapter applicable.

* See Act IX. of 1871. † See Act VII. of 1870

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ence made by the court, and to the award of arbitration and to the enforcement of such award.

Filing in court an award when the matter was referred to arbitration without intervention of court.

CCCXXVII. When any matter has been referred to arbitration without the intervention of any court of justice and an award has been made, any person interested in the award may* make application to the court having jurisdiction in the matter to which the award relates, that the award be filed in court. The court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring such parties to show cause, within a time to be specified, why the award should not be filed. The application† shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as an award made under the provisions of this chapter.

Enforcement of such award.

CHAPTER VII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

How questions may be raised for the decision of a Civil Court by any persons interested.

Questions of fact or of law or equity, may be raised by agreement for the decision of any court having jurisdiction.

CCCXXVIII. Parties interested or claiming to be interested in the decision of any question of fact or law, may enter into an agreement,‡ that upon the finding of a court in the affirmative or negative of such question of fact or law, a sum of money fixed by the parties, or to be determined by the court, shall be paid by one of the parties to the other of them; or that some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act, or shall refrain from doing or performing some particular act specified in the agreement. Where the agreement is for the delivery of some property movable or immovable, or for the doing or performing, or the refraining to do or perform any particular act, the estimated value of the property to be delivered, or to which the act specified may have reference, shall be stated in the agreement.

* See Act IX of 1871. † See Act VII of 1870.
‡ See Act VII of 1870.

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CCCXXIX. The agreement may be filed in any court having jurisdiction in the matter, and, when so filed, shall be numbered and registered as a suit between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the other or other of them as defendants or defendant; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

Agreement to be filed and numbered as a suit.

CCCXXX. After the agreement shall have been filed, all the parties to it shall be subject to the jurisdiction of the court, and shall be bound by the statements contained therein.

Parties to be subject to the court's jurisdiction.

CCCXXXI. The case shall be set down for hearing as an ordinary suit; and if the court shall be satisfied, after examination of the parties or their pleaders, or taking such evidence as it may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question of fact or law stated therein, and that the same is fit to be tried or decided, it shall proceed to record and try, or hear the same, and deliver its finding, or opinion thereon, in the same way as in an ordinary suit; and shall, upon its finding or deciding upon the question of fact or law, give judgment for the sum fixed by the parties, or so ascertained as aforesaid or otherwise, according to the terms of the agreement, and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Hearing and disposal of the case.

CHAPTER VIII.

OF APPEALS.

CCCXXXII. Repealed by Sec. I, Act XXIII. of 1861.

How Appeals are to be preferred.

CCCXXXIII. Appeals shall be made in the form of a memorandum, which shall be presented in the appellate court within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of the appellate court for not having presented it.*

Appeal to be preferred by a memorandum to be presented to the appellate court within specified time.

* See Act IX. of 1871.

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What the memorandum is to contain.

CCCXXXIV. The memorandum of appeal shall set forth concisely, and under distinct heads, the grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. The appellant shall not without the leave of the court urge or be heard in support of any other ground of objection, but the court in deciding the appeal shall not be confined to the grounds set forth by the appellant.

Form of memorandum.

CCCXXXV. The memorandum of appeal shall be in the following form, or to the following effect, and shall be accompanied by a copy of the decree appealed against.

Memorandum of Appeal.

(Name, &c. as in Register.) Plaintiff.
(Name, &c. as in Register.) Defendant.

[Name of appellant] Plaintiff [or defendant] above-named appeals to the Sudr Court at [or Zillah Court at as the case may be], against the decree of in the above suit, dated the day of ; for the following reasons, namely, [*here state the reasons.*]

If memorandum be not in form or duly presented.

CCCXXXVI. If the memorandum be not drawn up in the manner hereinbefore prescribed, the court may reject it, or may return it the party for the purpose of being corrected. If the memorandum be not presented within the prescribed period, and no sufficient cause be shown for the delay, the appeal shall be rejected.

One of several plaintiffs or defendants may appeal and obtain a reversal of the whole decree if it proceed on a ground common to all.

CCCXXXVII. If there be two or more plaintiffs, or two or more defendants in a suit, and the decision of the lower court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the appellate court may reverse or modify the decree in favor of all the plaintiffs or defendants.

Of staying and executing Decrees under Appeal.

Execution of decree not to be stayed by appeal; but if sufficient cause be shown, execution may be stayed.

CCCXXXVIII. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against such decree; but the appellate court may, for sufficient cause shown, order that execution be stayed. If application for execution be made before the time allowed for appeal

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has expired, and the lower court has not received intimation of an appeal having been preferred, the lower court, if sufficient cause be shown, may stay the execution. Before making an order to stay execution, the court making the order shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the appellate court.

Court, before making order to stay execution, shall require security for due performance of decree or order of appellate court.

CCCXXXIX. Repealed by Sec. I, Act XXIII. of 1861.

CCCXL. In suits instituted or defended under the authority and at the expense of Government, no such security as is mentioned in the last two preceding sections shall in any case be required from Government or from any public officer.

No such security to be required from Government or any public officer.

Of procedure in Appeals from Decrees.

CCCXLI. When a memorandum of appeal is presented in the prescribed form and within the time allowed, the appellate court, or the proper officer of that court, shall endorse thereon the date of presentment, and shall register the appeal in a book to be kept for the purpose, and called the register of appeals. Such register shall be in the form contained in the schedule (C) hereunto annexed.

How the appeal is to be entered.

Form of the register.

CCCXLII. It shall be in the discretion of the appellate court to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to appear and answer. Provided that the court shall demand such security in all cases in which the appellant is residing out of the British territories in India, and is not possessed of any land or other immovable property within those territories independent of the property to which the appeal relates; and in the event of such security not being furnished at the time of presenting the memorandum of appeal, or within such time as the court shall order, the court shall reject the appeal.

Appellate court may, at its discretion, require security for costs from appellant.

Proviso.

CCCXLIII. When the memorandum of appeal has been registered, the appellate court shall send intimation thereof to the lower court. If the appeal be from a court the records of which are not deposited in the appellate court, the lower court shall, upon the receipt of the intimation, trans-

Appellate court to send intimation to Lower Court of appeal being registered.

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Lower Court to transmit papers to Appellate Court.

mit to the appellate court with all practicable despatch, all material papers in the suit, or such papers as may be especially called for by the appellate court. Either party may give notice in writing to the lower court specifying any exhibits of which he requires copies to be made and deposited in the lower court, and copies of such exhibits shall be prepared at the expense of the party giving the notice, and shall be deposited in the lower court.

Either party may give notice of exhibits of which he requires copies to be made and deposited in the Lower Court.

Day for hearing the appeal how to be fixed.

CCCXLIV. A day shall be fixed by the appellate court for the hearing of the appeal. The day shall be so fixed with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear in person or by a pleader on such day.

Publication and service of notice of the day fixed for hearing the appeal.

CCCXLV. Notice of the day which has been fixed for hearing the appeal shall be affixed in the appellate court, and a like notice shall be sent by the appellate court to the lower court, and shall be served on the respondent in the same way as hereinbefore provided for the service of a summons to a defendant to appear and answer, and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice. The notice to the respondent shall contain an intimation that, if he does not appear in the appellate court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence. Provided that if the respondent has appointed a pleader to appear in his behalf in the appellate court, the service of the notice on such pleader shall be sufficient.

Form of notice.

Consequence of non-appearance.

CCCXLVI. If on the day fixed for hearing the appeal or any other day subsequent thereto, to which the hearing of the appeal may be adjourned, the appellant shall not appear in person or by a pleader, the appeal shall be dismissed for default. If the appellant shall appear in person or by a pleader, and the respondent shall not appear in person or by a pleader, the appeal shall be heard *ex parte* in his absence.

Re-admission of appeals dismissed for default of prosecution.

CCCXLVII. If an appeal be dismissed for default of prosecution, the appellant may* apply to the appellate court for the re-admission of the appeal; and if it shall be proved

* See Act IX. of 1871.

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to the satisfaction of the court that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the court may re-admit the appeal.

Respondent may object to decision of Lower Court in the same manner as if he had preferred a separate appeal.

CCCXLVIII. Upon the hearing of the appeal, the respondent may take any objections to the decision of the lower court which he might have taken if he had preferred a separate appeal from such decision.

The Appellate Court how to give judgment.

CCCXLIX. The appellate court, after hearing the appeal, shall proceed to give its judgment in the manner herein before prescribed for giving judgment in courts of original jurisdiction.

No decision to be reversed for irregularity.

CCCL. The judgment may be for confirming or reversing or modifying the decree of the lower court. But no decree shall be reversed or modified, nor shall any case be remanded to the lower court on account of any error, defect, or irregularity either in the decision or in any interlocutory order passed in the suit not affecting the merits of the case or the jurisdiction of the court.

When a cause may be remanded by Appellate Court.

CCCLI. If the lower court shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the appellate court essential to the rights of the parties, and the decree of the lower court upon such preliminary point shall be reversed by the decree in appeal, the appellate court may, if it think right, remand the case, together with a copy of the decree in appeal, to the lower court, with directions to restore the suit to its original number in the register and proceed to investigate the merits of the case, and pass a decree thereon.

Power to remand limited as above.

CCCLII. It shall not be competent to the appellate court to remand a case for a second decision by the lower court, except as provided in the last preceding section.

When the evidence is sufficient, the appellate court must determine the case though the Lower court has decided on other grounds.

CCCLIII. When the evidence upon the record of the lower court is sufficient to enable the appellate court to pronounce a satisfactory judgment, the appellate court shall finally determine the case, notwithstanding that the judgment of the lower court has proceeded wholly upon some other ground.

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Trials of issues by Lower Courton reference from Appellate Court.

CCCLIV. If the lower court shall have omitted to raise or try any issue or to determine any question of fact which shall appear to the appellate court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the appellate court to determine such issue or question of fact, the appellate court may frame an issue or issues for trial by the lower court, and may refer the same to the lower court for trial. Thereupon the lower court shall proceed to try such issue or issues, and shall return to the appellate court its finding thereon, together with the evidence. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the appellate court, file a memorandum of any objection to the finding; and after the expiration of the period so fixed, the appellate court shall proceed to determine the appeal.

When the appellate court may call for fresh evidence.

CCCLV. It shall not be competent to the parties in an appeal to produce additional evidence in the appellate court, whether of exhibits or witnesses; but if it appear that the lower court refused to admit competent evidence, or if the appellate court require any exhibits to be produced or witness examined to enable it to pronounce a satisfactory judgment, or for any other substantial cause, the appellate court may allow additional exhibits to be received and any necessary witnesses to be examined, whether such witnesses shall have been previously examined in the court below or not; provided that, whenever additional evidence is admitted by an appellate court, the reasons for the admission shall be recorded on the proceedings of such court.

How additional evidence is to be taken.

CCCLVI. Whenever additional evidence is permitted to be received, it shall be competent to the appellate court to take such evidence before itself, or to require the lower or any other court, or to empower any person to take such evidence, and to transmit the evidence so taken to the appellate court. It shall also be competent to the appellate court to prescribe the manner in which such evidence shall be taken.

Points to be defined.

CCCLVII. In all cases where additional evidence is permitted to be taken, the appellate court shall define the

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point or points to which the evidence is to be confined, and record the same on its proceedings.

CCCLVIII. Repealed by Sect. I, Act XXIII. of 1861.

Judgment of the Appellate Court. In what language it is to be written.

CCCLIX. The judgment of the appellate court shall be pronounced in open court. It shall contain the point or points for determination, the decision thereupon, and the reasons for the decision, and shall be dated and signed by the judge or by the judges concurring therein at the time of pronouncing it. The judgment shall be written in the English language; but if the judge shall not be able to write an intelligible judgment in that language, the judgment shall be written in the vernacular language of the judge. When the language in which the judgment is written is not the language in ordinary use in proceedings before the court, the judgment shall be translated into such language, and the translation shall be signed by the judge or judges. Any judge dissenting from the judgment of the court shall state his opinion in writing, which shall form part of the record.

Dissent to be recorded.

What decree is to contain.

CCCLX. The decree of the appellate court shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and description of the parties appellant and respondent, and the memorandum of appeal, and shall specify clearly the relief granted or other determination of the appeal. It shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the original suit are to be paid. The decree shall be signed by the judge or judges who passed it and shall be sealed with the seal of the court. If there be a difference of opinion among the judges of the court, it shall not be necessary for any judge dissenting from the judgment of the court to sign the decree, but the opinion of such judge shall be recited in the decree. Certified copies of the decree shall be furnished to the parties in the same manner as hereinbefore provided in regard to the decrees of courts of original jurisdiction.

A certified copy of the decree to be transmitted to the Lower Court.

CCCLXI. A copy of the decree or other order disposing of the appeal, certified by the appellate court or the proper officer of such court, and sealed with the seal of the court, shall be transmitted to the court which passed the first decree in the suit appealed from, and shall be filed with the original

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proceedings in the suit, and an entry of the judgment of the appellate court shall be made in the original register of the suit.

How to be executed.

CCCLXII. Application for execution of the decree of an appellate court shall be made to the court which passed the first decree in the suit, and shall be executed by that court in the manner and according to the rules herein-before contained for the execution of original decrees.

Appeals from Orders.

No appeal from order passed before decree, but error or defect therein may be set forth as an objection if the decree be appealed against.

CCCLXIII. No appeal shall lie from any order passed in the course of a suit and relating thereto prior to decree; but if the decree be appealed against, any error, defect, or irregularity in any such order affecting the merits of the case or the jurisdiction of the court, may be set forth as a ground of objection in the memorandum of appeal.

No appeal from order passed after decree and relating to the execution thereof except as provided.

CCCLXIV. No appeal shall lie from any order passed after decree and relating to the execution thereof, except as is herein-before expressly provided.

Appeal from orders as to fines or imprisonment.

CCCLXV. All orders as to fines or the levying thereof, or as to imprisonment under this Act (except when the imprisonment is in execution of a decree) shall be subject to appeal.

Procedure in appeals from orders.

CCCLXVI. When an appeal from any order is allowed, the period for preferring the appeal and the procedure thereon shall be in all respects the same as in an appeal from a decree.

CHAPTER IX.

OF APPEALS IN FORMA PAUPERIS.

Who may appeal as pauper.

CCCLXVII. Any party to a suit who may be unable to pay for the stamps required for the prosecution of an appeal from the decision passed therein, may be allowed to appeal as a pauper from such decision, subject to all the rules contained in the last preceding chapter and in Chapter V, in so far as they are applicable.

Application to whom and when to be presented.

CCCLXVIII. The application to be allowed to appeal *in forma pauperis* shall be written,* and shall be presented in the appellate court within the period allowed for the presentation of a memorandum of appeal.

* See Act VII. of 1870.

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CCCLXIX. The application shall contain the particulars required to be set forth in the memorandum of appeal and shall be drawn up in the like manner. It shall have annexed to it a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, and shall also be accompanied by copies of the judgment and decree from which the appeal is made. Form of application.

CCCLXX. If the appellate court, upon a perusal of the application and of the judgment and decree of the court below, shall see no reason to think that the decision of that court is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust, it shall reject the application. If the application be not rejected upon any of the grounds abovementioned, enquiry shall be made into the alleged pauperism of the applicant, and such enquiry may be conducted either by the appellate court or by the court from whose decision the appeal is made under the orders of the appellate court. Provided that, if the applicant was allowed to sue *in forma pauperis* in the court below, no further enquiry in respect of his pauperism shall be necessary, unless the appellate court shall see special cause to direct such enquiry. Procedure.

CCCLXXI. The order passed by the appellate court on an application to be allowed to appeal *in forma pauperis*, whether for the admission or rejection of the application, shall be final; but, if the application be rejected, the appellate court may, if it think proper, allow the applicant a reasonable time for preferring an appeal on a stamp of the value prescribed for appeals from decrees. Effect of order by Appellate Court.

CHAPTER X.

OF SPECIAL APPEALS.

CCCLXXII. Unless otherwise provided by any law for the time being in force, a special appeal shall lie to the sudder court from all decisions passed in regular appeal by the courts subordinate to the sudder court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have Special appeals allowed on what grounds.

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produced error or defect in the decision of the case upon the merits, and on no other ground.

Application to be presented to the Sudder Court.

CCCLXXIII. The application for the admission of a special appeal shall be presented in the sudder court,* and shall be accompanied by copies of the judgments and decrees of the lower appellate court and of the court of first instance. The application shall be written on a stamp paper of the value prescribed for regular appeals; but if the applicant be unable to pay for the stamps required for the prosecution of the appeal, the sudder court may admit him to appeal as a pauper, subject to all the rules contained in Chapter IX in respect to appeals from decrees *in formâ pauperis*, in so far as the same may be applicable.

Form of application.

CCCLXXIV. The application shall set forth concisely the grounds of objection to the decision appealed against, without argument or narrative, and such grounds shall be numbered consecutively. The applicant shall not, without the leave of the court, be heard in support of any other ground of objection; but the determination of the court may be upon any ground on which a special appeal would lie.

CCCLXXV. Repealed by Sec. I. Act XXIII. of 1861.

CHAPTER XI.

REVIEW OF JUDGMENT.

Review of Judgment.

CCCLXXVI. Any person considering himself aggrieved by a decree of a court of original jurisdiction, from which no appeal shall have been preferred to a superior court—or by a decree of a district court in appeal, from which no special appeal shall have been admitted by the sudder court—or by a decree of the sudder court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council—and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a review of judgment by the court which passed the decree.

On discovery of new evidence, &c.

* See Act IX. of 1871.

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CCCLXXVII. Repealed by Acts VII. of 1870, and X. of 1871.

CCCLXXVIII. If the court shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application; but if it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the court shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final. Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited.

The order of the Court for granting or refusing the review is final.

Proviso.

CCCLXXIX. If the court to which the application for a review of its judgment has been presented be a court consisting of two or more judges, whenever the judge or judges who may have passed the decree, or if the decree have been passed by two or more judges, when any of such judges shall continue attached to the court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering the judgment to which the application refers, it shall not be competent to any other judge or judges of the same court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the Sudder Court must be made to the Judge or Judges that passed the decree.

CCCLXXX. When an application for a review of judgment is granted, a note thereof shall be made in the register of suits or appeals (as the case may be), and the court shall give such order in regard to the re-hearing of the suit as it may deem proper in the circumstances of the case.

Procedure on application for a review being granted.

CHAPTER XII.

MISCELLANEOUS.

CCCLXXXI. Repealed by Sec. I, Act XXIII. of 1861.

CCCLXXXII. Except so far as relates to the examination of witnesses under commission, and to the execution of decrees out of the jurisdiction of the courts by which they were passed, this Act shall not extend to any suit instituted*

Act not to extend except in certain cases to Supreme and Presidency Small Cause Courts.

* See Act XIV. of 1870.

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in any court for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.

Saving of jurisdiction and procedure of Village Moonsiffs and Village or District Punchayets in Madras—

of Military Courts of Request—

of single Officers appointed to try small suits in Madras and Bombay,

and of Military Punchayets in Madras.

CCCLXXXIII. Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in civil cases of village moonsiffs or village or district punchayets under the provisions of the Madras code; or the jurisdiction or procedure of military courts of request; or the jurisdiction or procedure of a single officer duly authorized and appointed under the rules in force in the presidencies of Fort St. George and Bombay respectively for the trial of small suits in military bazars at cantonments and stations occupied by the troops of those presidencies respectively; or by punchayets in regard to suits against military persons, according to the rules in force under the presidency of Fort St. George.

Saving of certain special or local laws.

CCCLXXXIV. Nothing in this Act shall be held to affect the jurisdiction exercised by certain jagheerdars and other authorities invested with powers under the provisions of Regulation XIII. 1830 of the Bombay Code (*for vesting certain Jagheerdars, Surinjameedars, and Enamdars with the power of deciding suits within the boundaries of their respective estates*), and Act XV. of 1840 (*for extending Regulations XV, 1827, and XIII. 1830, of the Bombay Code, to the Agents of Foreign Sovereigns*), or their procedure in the exercise of such jurisdiction; or to affect suits instituted under Regulation XI. 1816 of the Bengal Code (*for receiving, trying, and deciding claims to the right of inheritance or succession in certain Tributary estates in Zillah Cuttack*), or cases of the nature defined in Regulation XXIX. 1827 (*for bringing under the operation of the Regulations the Bombay territories in the Dekkan and Khandesh*), Regulation VII. 1830 (*for bringing under the operation of the Regulations the Territories comprised in the Southern Mahratta Country*), Regulations I and XVI. 1831 of the Bombay Code (*for extending the jurisdiction of the Agent of Government in the Dekkan and Khandesh and of the Political Agent in the Southern Mahratta Country over suits in which certain privileged persons are concerned*), Act XIX. of 1835 (*relating to the jurisdiction and authority of the Assistant to the Agent for Sirdars in the Dekkan*), and Act XIII. of 1842 (*to enable the holders of revenue which has been alienated to them by*

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the State to collect that revenue within the Presidency of Bombay), except that such suits and cases, and the regular and special appeals to the civil courts allowed therein, shall be received, heard, and determined under the rules laid down in this Act unless where those rules are inconsistent with any specific provisions contained in the Regulations and Acts above quoted.

Act not to take effect in places not subject to the general Regulations until extended thereto.

CCCLXXXV. This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor General of India in Council, or by the Local Government to which such territory is subordinate, and notified in the *Gazette*.

Interpretation.

CCCLXXXVI. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender.

Words importing the masculine gender shall include females.

"District."

The local jurisdiction of a principal civil court of original jurisdiction shall be deemed a district for the purposes of this Act; and the words "district court" shall mean such court.

"District Court."

"Sudder Court."

In any part of the British territories in India to which this Act may be extended under the provisions of Section CCCLXXXV, the expression "sudder court" shall be deemed to include the highest civil court of appeal in such part of the said territories.

CCCLXXXVII. Repealed by Act XIV. of 1870.

Where Act comes into operation, procedure of Civil Courts to be regulated by it only.

CCCLXXXVIII. From and after the time when this Act shall come into operation in any part of the British territories in India, the procedure of the civil courts in such part of the said territories shall be regulated by this Act, and except as otherwise provided by this Act, by no other Law or Regulation.

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SCHEDULE A.

Court of the ——— of ——— holden at ———

Register of Civil Suits in the year 18

Date of presentation of plaint.	No. of Suit.	Plaintiff.		Defendant.			Claim.			Appearance.		Judgment.			Appeal.		Execution.				Return of Execution.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount or Value.	When the cause of Action accrued.	Day for Parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or Amount	Date of Appeal.	Judgment in Appeal.	Date of Application.	Date of Order.	Against whom.	For what and Amount if Money.	Amount of Costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and Date of every Return.

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SCHEDULE B.

No. of Suit.

IN THE COURT OF at

Plaintiff.
Defendant.

(Name, description, and address.)

Whereas [*here enter the name, description and address of the* ***Plaintiff***] has instituted a suit in this Court against you [*here state the particulars of the claim as in the Register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*if not specially required to appear in person, state*—"*in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions*"] to answer the above-named Plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here*; "*and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day*"]; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the Plaintiff*] which the Plaintiff desires to inspect, and any document on which you intend to reply in support of your defence.

SCHEDULE C.

COURT AT

REGISTER OF APPEALS from DECREES in the year 18 .

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what, or amount.

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SCHEDULE D.

SUDDER COURT at

REGISTER OF SPECIAL APPEALS.

Date of Memorandum.	No. of Appeal.	Appellant.				Respondent.			Decree appealed from.				Appearance.			Judgment.		
		Names.	Description.	Place of abode.		Names.	Description.	Place of abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value	Day for Parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what, or Amount.

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A. D. 1859. ACT XIV.*

AN ACT *to provide for the Limitation of Suits.*
Passed on the 5th May 1859.

XV. If any person shall without his consent have been dispossessed of any immovable property otherwise than by due course of law, such person or any person claiming through him shall in a suit brought to recover possession of such property, be entitled to recover possession thereof notwithstanding any other title that may be set up in such a suit; provided that the suit be commenced within six months from the time of such dispossession. But nothing in this section shall bar the person from whom such possession shall have been so recovered or any other person instituting a suit to establish his title to such property and to recover possession thereof within the period limited by this Act.

Person unlawfully dispossessed of immovable property may recover possession notwithstanding any title that may be set up.

Suit for dispossession to be brought within six months.

Suit to establish title not to be affected.

A. D. 1860. ACT IX.

AN ACT *to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers.*
Passed on the 12th March 1860.

WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers; it is enacted as follows:—

Preamble.

I. It shall be lawful for the Executive Government of any presidency or place within the British territories in India to invest any magistrate or other officer exercising the powers of a magistrate with power to enquire into and decide disputes on account of wages, hire of carriage, or the price of work, between any workmen employed in the construction of any railway, canal, or other public work, the construction of which is or shall be sanctioned by Parliament or by any such Executive Government, and the person or persons by whom such workmen are employed.

Government may empower any magistrate to decide disputes as to wages or price of work.

* The whole Act except so much of Section XV. as does not relate to limitation of suits repealed by Act IX. of 1871. See also Act XIV. of 1870.

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Magistrates to have jurisdiction in what cases.

II.* Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees, and the claim is preferred within six months from the date on which the cause of action arose.

Government to fix and alter local limits of jurisdiction.

III. The Executive Government shall fix, and may from time to time alter the local limits of the jurisdiction of any magistrate invested with jurisdiction under Section I. of this Act. A magistrate so invested may hold a court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction.

Procedure in the investigation of disputes.

IV. The rules for the institution of suits as provided in Act VIII. of 1859 (*for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter*) shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing.

No appeal.

V. There shall be no appeal against any decision passed under this Act.

Order for payment.

VI. The magistrate having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due, and if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the magistrate shall direct, the magistrate shall issue his warrant to levy the money by distress and sale of the goods and chattels of the defaulter.

Distress.

Property distrained.

VII. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said Act VIII. of 1859 for the determination of the like questions arising in the execution of decrees.

Penalty for workmen neglecting or refusing to work.

VIII. Any person who shall voluntarily engage for a stipulated period to work on a railway, canal, or other pub-

* So much of this section as relates to limitation of suits, repealed by Act IX. of 1871.

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lic work, the construction of which is or shall be sanctioned in the manner specified in Section I. of this Act, or to execute any specific work in connection with such public work, and who shall wilfully and without lawful or reasonable excuse neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a magistrate, to a fine not exceeding twenty rupees. The magistrate may, at the request of the complainant or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and if he shall fail to comply with the order, the magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned with or without hard labor for any term not exceeding two months.

IX. This Act shall take effect only in those districts or places to which it shall be extended by order of the Governor-General of India in Council, or of the Executive Government of any presidency or place. Operation of Act.

A. D. 1860. ACT XXVII.*

AN ACT *for facilitating the collection of debts on Succession, and for the security of parties paying debts to the representatives of deceased persons.*

Passed on the 25th June 1860.

WHEREAS it is expedient to consolidate and amend certain Acts now in force which provide greater security for persons paying to the representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased person, and which facilitate the collection of such debts by removing all debts as to the legal title to demand and receive the same; it is enacted as follows:— Preamble.

I. Act XX. of 1841 (*for facilitating the collection of debts on Successions, and for the security of parties paying debts to* Acts repealed.

* This Act is repealed by Section II. Act XXIV. of 1867 except as to Hindoos, Mahomedans and Budhists, and persons exempted under the Indian Succession Act 1865, Section 332 from the operation of such Act.

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the representatives of deceased persons), so much of Act VIII. of 1842 as relates to the said Act XX. of 1841; Act X. of 1851 (*to amend Act XX. of* 1841 *for the administration of personal estate of deceased persons*), and Act VIII. of 1854 (*to explain and amend Act X. of* 1851 *and Act XX. of* 1841) —are hereby repealed; except as to certificates granted and acts done under the authority of the said laws before the passing of this Act.

No debt recoverable without a certificate.

II. No debtor of any deceased person shall be compelled in any court to pay his debts to any person claiming to be entitled to the effects of any deceased person or any part thereof, except on the production of a certificate to be obtained in manner hereinafter mentioned, or of a probate or letters of administration, unless the court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.

Certificate how to be obtained.

III. The district court within the jurisdiction of which the deceased shall have ordinarily resided at the time of his death, or if at that time he had no fixed place of residence, then within the jurisdiction of which any part of the property of the deceased may be found, shall have authority to grant a certificate under this Act. The applicant in his petition shall set forth his title. The court shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day or as soon after as may be convenient, shall determine the right to the certificate and grant the same accordingly.

Effect of certificate.

IV. The certificate of the district court shall be conclusive of the representative title against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favor the certificate has been granted.

Court may take security from grantee of certificate.

V. The court may take such security as it shall think necessary from any person to whom it shall grant a certificate, for rendering an account of debts received by him and for indemnity of persons who may be entitled to the whole or any part of the monies received by virtue of such certifi-

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cate, whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.

Sudder Court may suspend certificate granted by District Court, or direct further proceedings.

VI. The granting of such certificate may be suspended by an appeal to the sudder court, which court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The court may also, upon petition, after a certificate shall have been granted by the district court, grant a fresh certificate in supersession of the certificate granted by the district court. Such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been granted, without notice that the same has been superseded, but shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted.

Sudder Court may grant fresh certificate in supersession of the certificate granted by the District Court.

Local extent of power given by certificate.

VII. Every certificate shall give authority to the person to whom the same is granted throughout the presidency within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.

Government securities, bank-shares, and shares in public companies.

VIII. If the estate of the deceased shall include any government securities or bank-shares, or any shares in any public company, the certificate may empower the person certified as aforesaid to receive interest or dividends thereon or on any of them, or to negotiate the same or any of them; in such case the certificate shall describe the securities and shares in respect of which such powers are given, and such powers shall not be vested by the certificate except by express words.

Appointment of trustee in case of disputed succession.

IX. In the case of disputes among persons claiming to be jointly entitled to be proprietors of any government securities as the representatives of any deceased person, the district court, whenever sufficient cause shall be shown, and on the request of any such claimant, may, so far as concerns the said securities, grant a certificate under this Act to such person as shall be from time to time appointed by the local Government to act as trustee under this section, and shall

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specify in such certificate the several persons appearing to him to be such proprietors, and their several shares; and the said trustee, by virtue of such certificate, shall be entitled to receive and give discharges for the interest accruing due on such securities, and shall account for and pay the sum to the several persons specified in the certificate to be thereunto entitled according to the shares therein set forth, and shall be empowered to act in all other respects concerning the said securities as agent for such persons, and shall be entitled to receive such commission, not exceeding one per centum on the sums received and paid by him, as the local Government shall think fit. Provided nevertheless that the right of any other person to recover the whole or any part of the monies so paid by regular suit against all or any of the persons to whom the same may have been paid, shall not be affected by this Act.

Proviso.

Appropriation if securities be not settled within two years.

X. If any such disputes among person claiming to be proprietors of government securities are not ended within two years from the date of the certificate granted under the last preceding section, the said trustee may apportion the principal sum of the said securities rateably among the parties appearing from the certificate to be proprietors thereof, and may apply for and receive new securities from the proper officer appointed to issue the same in the respective names of the several parties certified to be entitled thereto; provided that such new securities shall be issued only according to the rules in use for the regulation and issue of such government securities, and the receipt of the said trustee for such new securities, by endorsement on the old securities or otherwise, shall be a legal discharge to the Government against the disputing parties claiming to be entitled to the several amounts for which such securities shall be issued. Provided always that if the amount of any government securities in dispute or any part thereof shall not be sufficient to admit of their rateable division according to the rules applicable to the issue of such securities, the said trustee may sell and dispose of the disputed securities, or such part as shall be necessary under this provision, and apportion the proceeds thereof among the parties entitled to receive the same.

Proviso.

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Effect of certificate granted to trustee.

XI. Every certificate granted to the trustee appointed under Section IX, shall be taken to supersede and annul any previous certificate so far as such previous certificate relates to the said government securities.

Payments under first certificate.

XII. When a certificate shall have been granted, in cases in which such certificate would be valid but for the previous grant of a certificate, all payments made to the person holding the latter certificate in ignorance of the grant of the previous certificate, shall be held good against claims under such previous certificate.

Certificate in respect of property of deceased Hindoos, Mahomedans, &c., void after grant of probate or letters, protected.

XIII. With regard to the property of a deceased Hindoo, Mahomedan, or other person not usually designated by the term "British subject," no certificate in respect of any such property shall be valid if made after a probate or letters of administration granted in respect of the same, provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the court granting the probate or letters of administration.

Certain payments under certificate granted after grant of probate or letters, protected.

XIV. Where a certificate shall have been granted, in cases in which such certificate would be valid but for a probate or letters of administration previously granted, all payments made to the person holding the certificate in ignorance of the previous granting of the probate or letters of administration, shall be held good against claims under the probate or letters of administration so previously granted.

Probate or letters void after grant of certificates.

XV. No probate or letters of administration shall be valid for the purpose of the recovery of debts or for the security of debtors, after a certificate granted in respect of the same property for which such probate or letters of administration shall have been granted, provided assets belonging to the deceased were at the time of his death within the jurisdiction of the court granting such certificate.

Proviso.

Certain payments under probate or letters granted after grant of certificate, protected.

XVI. Where probate or letters of administration may have been granted in cases in which such probate or letters of administration would be valid but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.

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Curators prohibited from exercising certain powers.

XVII. Curators appointed under Act XIX of 1841, who may be invested with certain powers which are conferred on persons obtaining certificates under this Act, shall not exercise any powers which, but for that Act, would lawfully belong to persons obtaining certificates, or to executors or administrators where a certificate, probate, or letter of administration has been actually obtained; but all persons who may have paid debts or rents to a curator authorized by a court to receive the same, shall be indemnified, and the curator shall be responsible for the payment of the same to the person who has obtained a certificate, the executor, or administrator, as the case may be.

Effect of probates and letters granted to representatives of persons not usually termed "British subjects."

XVIII. All probates and letters of administration granted by any supreme court of judicature in cases in which any assets belonging to deceased persons were at the time of their deaths within the local jurisdiction of the court granting the probate or letters of administration, shall have the effect of probate and letter of administration granted in respect of the property of British subjects, but for the purpose of the recovery of debts only and the security of debtors paying the same, except so far as is in this Act provided.

Effect of certificates granted by British representatives in foreign states.

XIX. A certificate of administration granted by the British representatives accredited to any foreign prince or state, shall, as regards the residents within the territories of such prince or state, have the same effect in respect to government securities as a certificate granted to a native subject of Her Majesty under the provisions hereinbefore contained.

Local extent of power given by such certificates.

XX. Every certificate of administration granted under the last preceding section shall, as regards the government securities, give authority to the person to whom the same shall be granted throughout the British territories in India, and have the same effect throughout the said territories as a certificate granted under Section VII of this Act has within the presidency within which the same is granted.

Extension of certificate.

XXI. Any court or officer authorized to grant a certificate, may from time to time extend the same to any government security or bank share not originally specified therein, and every such extension shall have the same effect as if the

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government security or bank share to which the certificate shall be extended had been originally specified therein.

XXII. Upon the extension of a certificate, security may be required in the same manner as upon the original grant of a certificate. Security upon extension.

XXIII. Nothing in this Act contained shall be held to extend to the property of any person usually designated as a British subject. Act not to apply to British subjects.

XXIV. The following words and expressions in this Act shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)— Interpretation.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Number.

Words importing the masculine gender shall include females. Gender.

The words "district court" shall mean the principal civil court of original jurisdiction of a zillah or district. "District Court."

The words "sudder court" shall be deemed to include the highest civil court of appeal in any part of the British territories in India, not subject to the control and superintendence of a sudder court. "Sudder Court."

A. D. 1860. ACT XXXIV.

AN ACT *to indemnify Officers of Government and other Persons in respect of Fines and Contributions levied, and acts done by them during the late Disturbances.*

Passed on the 20th August 1860.

WHEREAS fines and penalties have been imposed and levied by officers of Government in respect of acts committed during the late disturbances; and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period and for other purposes; and whereas Preamble.

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it is expedient to indemnify all officers of Government and other persons acting under the authority of officers of Government from any penalties or proceedings to which they may have rendered themselves liable since the 10th day of May 1857 in respect of the said fines, penalties, assessments, and contributions, and of any other acts which may have been done by them, and which have been or shall be ratified by the Executive Government, and to confirm and make valid the levy of the said fines, penalties, assessments and contributions, and the said acts; it is enacted as follows:—

Certain fines, penalties, &c., imposed since 10th May 1857 to be deemed to have been duly imposed and levied.

I. All fines, penalties, assessments, and contributions imposed since the tenth day of May 1857 in respect of the destruction or injury of Government or other property, or on any other account connected with the late disturbances by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied if the same shall have been levied in pursuance of an order of Government or shall have been or shall be ratified by the Executive Government; and all officers of Government, and all persons acting under their authority are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments and contributions, and levying the same, and no suit or proceeding shall be commenced or prosecuted in respect thereof.

Proviso.

Provided that nothing in this Act shall authorize the levy of any fine, penalty, assessment or contribution not already levied.

Officers indemnified for certain acts done since 10th May 1857.

II. All acts done since the tenth day of May 1857 in connection with the late disturbances by officers of Government, or by persons acting under their authority or otherwise in pursuance of an order of Government, or which shall have been or shall be ratified by the Executive Government, are hereby confirmed and made valid; and all such officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts.

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A. D. 1861. ACT IX.

AN ACT *to amend the Law relating to Minors.*

Passed on the 24th April 1861.

Preamble. WHEREAS it is expedient to amend the law for hearing suits relative to the custody and guardianship of minors; it is enacted as follows:—

Application. I. Any relative or friend of a minor who may desire to prefer any claim in respect of the custody or guardianship of such minor, may make an application by petition, either in person or by a duly constituted agent, to the principal civil court of original jurisdiction in the district by which such application, if preferred in the form of a regular suit, would be cognizable, and shall set forth the grounds of his application in the petition. The court, if satisfied by an examination of the petitioner, or his agent, if he appear by agent, that there is ground for proceeding, shall give notice of the application to the person named in the petition as having the custody or being in the possession of the person of such minor, as well as to any other person to whom the court may think it proper that such notice should be given, and shall fix as early a day as may be convenient for the hearing of the petition and the determination of the right to the custody or guardianship of such minor.

Production and temporary custody and protection of minor. II. The court may direct that the person having the custody or being in possession of the person of such minor shall produce him or her in court or in any other place appointed by the court on the day fixed for the hearing of the petition or at any other time, and may make such order for the temporary custody and protection of such minor as may appear proper.

Court, after hearing statements of the parties, &c., to make order regarding custody or guardianship of minor. III. On the day appointed for the hearing of the petition, or as soon after as may be practicable, the court shall hear the statements of the parties or their agents, if they appear by agents, and such evidence as they or their agents may adduce, and thereupon shall proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor and the costs of the case.

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Procedure.

IV. In cases instituted under this Act, the court shall be guided by the procedure prescribed in Act VIII. of 1859 (*for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter*), in so far as the same shall be applicable and material; and any order made by the court may be enforced as if such order had been made in a regular suit.

Appeal.

V. An appeal shall lie to the sudder court from any order made by a lower court under this Act, under the rules applicable to regular appeals to such sudder court, except that the petition of appeal may be written on a stamp paper of the value prescribed for petitions to the sudder court.

Orders passed under this Act not liable to be contested in a regular suit.

VI. Any order passed under this Act in respect to the custody or guardianship of a minor, shall not be liable to be contested in a regular suit.

Saving of laws.

VII. Nothing in this Act shall be taken to interfere with the jurisdiction exercised under the laws in force by any supreme court of judicature or the courts of wards; or under Act XXI. of 1855 (*for making better provision for the education of male minors, and the marriage of male and female minors, subject to the superintendence of the Court of Wards in the Presidency of Fort Saint George*), and Act XL. of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal.*)

Interpretation.

VIII. The term "sudder court" in this Act shall denote the highest court of appeal in any part of the British territories in India.

A. D. 1861. ACT XXIII.

AN ACT *to amend Act VIII. of* 1859 (*for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.*)

Passed on the 28th August 1861.

Preamble.

WHEREAS it is expedient to amend Act VIII. of 1859 (*for simplifying the procedure of the Courts of Civil Judicature*

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not established by Royal Charter) and to consolidate the Acts previously passed for the amendment of the said Act; it is enacted as follows:—

I. Repealed by Act XIV. of 1870.

Cost of serving process. Requisite sum to be paid into Court within a certain time before process is issued.

II. Every process required to be issued under Act VIII of 1859 shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the court; and the sum required to defray the costs of such service shall be paid into court before the process is issued, within a period to be fixed by the court issuing the process.

Plaint to be returned if it appear to the Court that it has not jurisdiction.

III. If it appear to the court in any case relating to land or other immovable property that such land or other property is not situate within the limits of the jurisdiction of the court, or in any other case, that the cause of action did not arise, and that the defendant is not dwelling or personally working for gain within such limits, the court shall return the plaint to the plaintiff in order to its being presented in the proper court.

In what Court a suit against several defendants may be brought.

IV. If in any suit there are more defendants than one, and at the date of the institution of the suit all the defendants shall not reside within the jurisdiction of the court in which the suit is brought, but one or more of the defendants shall reside within such jurisdiction, the suit shall not be rejected by reason of all the defendants not residing within the jurisdiction of the court in which the suit is brought; but the district court, if the suit is pending in any court subordinate to such court, or the sudder court, may order that the suit be heard in any court subordinate to such sudder or district court, and competent in respect of the value of the suit to try the same.

Procedure on discovery, on the day fixed for defendant to appear and answer, that usual notice has not been served in consequence of failure of plaintiff to deposit the cost of issuing the same.

V. If on the day fixed for the defendant to appear and answer to a suit, it shall be found that the summons to the defendant has not been served in consequence of the failure of the plaintiff to deposit within the time allowed the sum required to defray the cost of issuing the summons, the court may order that the suit be dismissed. Provided that no such order shall be passed, although the summons shall not have been served upon the defendant, if on the day fixed for

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the defendant to appear and answer, he shall have entered an appearance by a pleader or by a duly authorized agent when he is allowed to appear by agent, or shall be in attendance in person.

Provisions of last Section to apply to appeals also.

VI. The provisions of the last preceding section shall apply to appeals also.

Procedure in case of dismissal of suit under Section 5.

VII. Whenever a suit is dismissed under the provisions of Section 5 of this Act, the plaintiff shall be at liberty to institute a fresh suit, unless precluded by the rules for the limitation of actions; or if the plaintiff shall satisfy the court within the period of thirty days from the date of the order dismissing the suit that there was a sufficient excuse for his not making the deposit required within the time allowed, the court may order a fresh summons to issue upon the plaint already filed.

Procedure on application for discharge by a person arrested in execution of a decree for money.

VIII. When a person arrested under a warrant in execution of a decree for money shall, on being brought before the court, apply for his discharge on either of the grounds mentioned in Section 273 of Act VIII. of 1859, the court shall examine the applicant in the presence of the plaintiff or his pleader as to his then circumstances and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged, and should the plaintiff fail to show such cause, the court may direct the discharge of the defendant from custody. Pending any enquiry which the court may consider it necessary to make into the allegations of either party, the court may leave the defendant in the custody of the officer of the court to whom the service of the warrant was entrusted, on the defendant depositing the fees of such officer, which shall be at the same daily rate as the lowest rate charged in the same court for serving process; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default of such appearance to pay the amount mentioned in the warrant, the court may release the defendant on such security.

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IX. If the court shall at any time think it necessary for the ends of justice to examine any person other than a party to the suit and not named as a witness by a party to the suit, the court may, of its own accord, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine such person as a witness. The costs of summoning such person, if not deposited by either party to the suit, shall be paid by the collector under an order of the court, and shall be costs in the suit, and shall be paid out of any money recovered on account of costs in the suit, whether at the instance of the Government or of either party, before any other costs in the suit are paid.

Court may of its own accord summon witnesses.

X. When the suit is for a sum of money due to the plaintiff, the court may in the decree order interest at such rate as the court may think proper to be paid on the principal sum adjudged from the date of suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the date of suit; with further interest on the aggregate sum so adjudged and on the costs of the suit from the date of the decree to the date of payment.

In suits for money decree may order certain interest to be paid on the principal sum adjudged.

XI. All questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, shall be determined by order of the court executing the decree, and not by separate suit, and the order passed by the court shall be open to appeal. Provided that if upon a perusal of the petition of appeal and of the order against which the appeal is made, the court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent before the order of rejection is passed.

How questions regarding amount of mesne profits and interest and sums paid in satisfaction of decrees, &c., are to be determined.

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XII. Repealed by Acts VII. of 1870 and IX. of 1871.

In suits of the nature and amount cognizable by Small Cause Courts, court may, on verbal application of judgment-creditor, direct immediate execution either against the person or property of judgment-debtor.

XIII. When a decree is passed in any suit of the nature and amount cognizable by courts of small causes constituted under Act XLII of 1860,* the court passing the decree, whether such court be a court constituted as aforesaid or any other court, may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, direct immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the court passing the decree, or against the personal property of the judgment-debtor within the same limits. If the warrant be directed against the personal property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the court, or special against any personal property belonging to the judgment-debtor within the same limits, which shall be indicated by the judgment-creditor.

Co-sharer of a share of a putteedaree estate sold in execution of decree, may claim to take the share at the sale price.

XIV. When the land sold in execution of a decree is a share of a putteedaree estate paying revenue to Government as defined in Section II, Act I. of 1841 *(for facilitating the collection of the Revenue of Government and defining the interest intended to be conveyed by public sale, for the realization of arrears of the Public Revenue in Putteedaree Estates,)* if the lot shall have been knocked down to a stranger, any co-sharer other than the judgment-debtor, or any other member of the comparcenary, may claim to take the share sold at the sum at which the lot was knocked down. Provided that the claim be made on the day of sale, and that the claimant fulfil all the conditions of the sale.

Proviso.

Procedure on receiving application for execution of decree.

XV. The court, on receiving any application for execution of a decree containing the particulars mentioned in Section 212 of Act VIII. of 1859, or such of them as may be applicable to the case, shall enter a note of the application and the date on which it was made in the register of the suit. If it shall be shown to the court that the particulars do not correspond with the original decree, the court shall either

* Now Act XI. of 1865.

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return the application for correction to the person making it, or shall, with the consent of such person, cause the necessary correction to be made. If the application be admitted, the court shall order execution of the decree according to the nature of the application.

Procedure when certain offences under Chapter XI. of the Penal Code are committed in any case pending before any court.

XVI. When in any case pending before any court any witness or other person shall appear to the court to have been guilty of an offence described in Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, or 210 of the Indian Penal Code, the court may commit such person to take his trial for the offence before the court of session, or after making such preliminary enquiry as may be necessary, may send the case for investigation to any magistrate having jurisdiction to try or commit for trial the accused person for the offence charged, and such magistrate shall thereupon proceed according to law.

Court may take bail and bind over witness to give evidence.

XVII. The court may send the person accused in custody, or take sufficient bail for his appearance before the magistrate, and may bind over any person to appear and give evidence before the magistrate.

How the charge is to be framed.

XVIII. When the commitment is made by the court, the court shall frame a charge in the manner provided in Chapter XIII. of the Code of Criminal Procedure, and shall transmit the same with the order of commitment and the record of the case to the magistrate, and such magistrate shall bring the case, together with the witnesses for the prosecution and defence, before the court of session.

Procedure in case of certain offences relating to documents.

XIX. When in any case pending before any court there shall appear to the court sufficient ground for sending for investigation to the magistrate, a charge described in Sections 463, 471, 475, or 476 of the Indian Penal Code, which may be preferred in respect to any deed or paper offered in evidence in the case, the court may send the person accused in custody to the magistrate, or take sufficient bail for his appearance before the magistrate. The court shall send to the magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such magistrate. The magistrate shall re-

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ceive such charge and proceed with it under the rules for the time being in force.

Procedure in case person accused under Section 16 or 19 is a European British subject.

XX. If the person accused, or any one of the persons accused in any case falling under Section 16 or Section 19 of this Act is a European British subject, the court shall send such person in custody or take sufficient bail for his appearance before an officer empowered to commit or hold to bail persons charged with offences for trial before a supreme court of judicature, and such officer shall proceed according to law.

Procedure in certain cases of contempt.

XXI. When any such offence as is described in Sections 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any court, it shall be competent to such court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the court on the same day, to take cognizance of the offence; and to adjudge the offender to punishment by fine not exceeding 200 rupees, or by imprisonment in the civil jail for a period not exceeding one month unless such fine be sooner paid. In every such case the court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the court, in any case, shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding 200 rupees should be imposed upon him, such court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a magistrate, or, if the accused person be a European British subject, to a justice of the peace, and shall cause bail to be taken for the appearance of such accused person before such magistrate or justice of the peace, or if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such magistrate or justice of the peace. If the case be forwarded to a magistrate, such magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a magistrate and it shall be competent to such magistrate to adjudge such offender to punishment, as provided in the section of the Indian Penal Code under which he is charged. If the case

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be forwarded to a justice of the peace, such justice of the peace shall enquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the statute 53 of George III., C. 155, S. 105, in a justice of the peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said statute. If such justice of the peace shall consider the offence to require a more severe punishment than a justice of the peace is competent to award under the said statute, he may commit the offender to a supreme court of judicature.

Discharge of an offender on his submission.

XXII. When any person has been sentenced to punishment under the last preceding section for refusing or omitting to do any thing which he was lawfully required to do, it shall be competent to the court to discharge the offender or to remit the punishment on the submission of the offender to the order or requisition of such court.

Appeal to lie from all decrees, except when expressly prohibited.

XXIII. Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the courts of original jurisdiction to the courts authorized to hear appeals from the decisions of those courts. If the appeal lie to the sudder court, it shall be heard and determined by a court consisting of two or more judges of that court.* If, when the court shall consist of only two judges, there is a difference of opinion upon the evidence in cases in which it is competent to the court to go into the evidence, and one judge concur in opinion with the lower court as to the facts, the case shall be determined accordingly: if in a court so constituted there is a difference of opinion upon a point of law, the judges shall state the point upon which they differ, and the case shall be re-argued upon that question before one or more of the other judges, and shall be determined according to the opinion of the majority of the judges of the sudder court, by whom the appeal is heard.

Appeal to Sudder Court to be heard by two or more judges.

Procedure in case of application by sureties to be discharged.

XXIV. The sureties for the appearance of any person under Section 76 of the said Act VIII. of 1859, may at any time apply to the court in which they became such sureties

* Vide Act IX. of 1863.

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to be discharged from their engagements. On such application being made, the court shall summon such person to attend, or if it shall think fit, may issue a warrant in the first instance for his appearance. On the appearance of such person pursuant to the summons or warrant, or on his voluntary surrender, the court shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and thereupon proceedings shall be had under Sections 77 and 78 of the said Act.

Application for the admission of a special appeal informally drawn up, how to be dealt with.

XXV. If the application for the admission of a special appeal be not written on a stamp paper of the prescribed value, or if it be not drawn up in the manner laid down in Section 374 of Act VIII. of 1859, or if it do not state any ground on which a special appeal will lie under the provisions of Section 372 of the said Act, the court may reject the application, or may return it to the party for the purpose of being corrected. The order for rejecting the application or for returning it to the party may be passed by a single judge of the court. When the application is correctly drawn up, it shall be registered in a book to be kept for that purpose, which shall be in the form contained in the Schedule D of the said Act, and the case shall proceed in all other respects as a regular appeal, and shall be subject to all the rules hereinbefore provided for such appeals, so far as the same be applicable.

No appeal from order or decision under Section 15, Act XIV of 1859.

XXVI. No appeal shall lie from any order or decision passed in any suit instituted under Section XV, Act XIV. of 1859 (*to provide for the limitation of suits*), nor shall any review of any such order or decision be allowed.

No special appeal from decision of any court subordinate to the Sudder Court in certain suits.

XXVII. No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any court subordinate to the sudder court, in any suit of the nature cognizable in Courts of Small Causes under Act XLII. of 1860 (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter*), when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred rupees; but every such order or decision shall be final.

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Reference of question to the sudder court.

XXVIII. If in any suit in which an order or decision is made final under the last preceding sections, any question of law or usage having the force of law, or the construction of a document affecting the merits of the case shall arise, on which the court trying such suit shall entertain reasonable doubts, the court may, either of its own motion or on the application of either of the parties to the suit, draw up a statement of the case, and submit such statement with its own opinion for the decision of the sudder court.

Court may pass decree contingent upon the opinion of the Sudder Court, pending which execution not to issue.

XXIX. The court may proceed in the case notwithstanding a reference to the sudder court, and may pass a decree contingent upon the opinion of the sudder court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the sudder court until the receipt of the order of that court.

Two or more judges of Sudder Court to decide cases referred under Section 28.

XXX. Cases referred for the opinion of the sudder court shall be dealt with by two or more judges of that court.

Sudder Court to fix an early day for the hearing of the case. Proclamation thereof.

XXXI. The sudder court shall fix an early day for the hearing of the case, and shall notify the same by a proclamation to be fixed up in the court-house of that court.

Parties may appear and be heard in person or by pleader.

XXXII. The parties to the case may appear and be heard in the sudder court in person or by pleader.

Decision of Sudder Court how to be transmitted.

XXXIII. The sudder court, when it has heard and considered the case, shall transmit a copy of its judgment under the seal of the court and the signature of the register, to the court by which the reference was made; and such court shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the sudder court.

Costs of reference to Sudder Court.

XXXIV. Costs, if any, consequent on the reference of a case for the opinion of the sudder court, shall be costs in the suit.

Sudder Court may call for record of lower appellate court, and set aside its decision, though no appeal shall lie to the Sudder Court.

XXXV. The sudder court may call for the record of any case decided on appeal by any subordinate court in which no further appeal shall lie to the sudder court, if such subordinate court shall appear in hearing the appeal to have exercised a jurisdiction not vested in it by law, and the sudder court may set aside the decision passed on appeal in

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such case by the subordinate court, or may pass such other order in the case as to such suddef court may seem right.

Security may be taken when execution is required of a decree which has been appealed against.

XXXVI. When an order is made for the execution of a decree against which an appeal has been preferred, it shall be lawful for the court which pronounced the decree to require security to be given for the restitution of any property which may be taken in execution of the decree or of the value thereof, and for the due performance of the decree or order of the appellate court. The appellate court may in any such case direct the court which pronounced the decree to take such security.

Appellate Court to have the same powers as courts of original jurisdiction.

XXXVII. Unless when otherwise provided, the appellate court shall have the same powers in cases of appeal as are vested in the courts of original jurisdiction in respect of original suits.

Procedure prescribed by Act VIII. of 1859 to be followed in all future miscellaneous cases and proceedings.

XXXVIII. The procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which after the passing of this Act shall be instituted in any court.

Extension of Act to Non-Regulation Provinces.

XXXIX. When under the provisions of Section 385 of the said Act, the Act is extended to any part of the territories not subject to the General Regulations of Bengal, Madras, and Bombay, it shall be lawful for the Government to which the territory is subordinate, to declare that the Act shall take effect therein subject to any restriction, limitation, or proviso which it may think proper. In such case the restriction, limitation, or proviso shall be inserted in the declaration or notification of such extension. When the Act is extended by the Local Government to any territory subordinate to such Government, and such extension is made subject to any restriction, limitation, or proviso, the previous sanction of the Governor-General of India in Council shall be requisite.

Sudder Court to make general rules for regulating proceedings, &c.

XL. The sudder court shall have power to make and issue general rules for regulating the practice and proceedings of that court and the courts subordinate to it, and also to frame forms for every proceeding in the said courts for which it shall think necessary that a form be provided, for

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keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by such courts, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act or of any other law in force. Any rules framed under this section shall be published in the official Gazette.

Interpretation of "Pleader."

XLI. The word "pleader" as used in this Act shall include the words "counsel" and "advocate."

Short title.

XLII. Act VIII. of 1859 shall be called the Code of Civil Procedure.

XLIII. Repealed by Act XIV. of 1870.

Construction.

XLIV. This Act shall be read and taken as part of Act VIII. of 1859.

A. D. 1863. ACT IX.

AN ACT *to amend the Code of Civil Procedure.*

Passed on the 23rd February 1863.

Preamble.

WHEREAS the Code of Civil Procedure requires that appeals from decisions or orders to the sudder court shall ordinarily be heard and determined by two or more judges of the said court; and whereas in the territories not subject to the general regulations, the highest civil courts of appeal, which are declared by Section 386 of Act VIII. of 1859 to be included in the expression "sudder court" in any part of the said territories to which the said code may be extended, generally consist of only a single judge, and it is expedient to make provision for the powers to be exercised by such single judge in hearing appeals from decisions and orders, or in proceedings relating to any other matter which may be brought before him; it is enacted as follows:—

In certain places the highest Civil Court of appeal to have poewrs of Sudder Court.

I. When in any part of the British territories in India to which the Code of Civil Procedure has been or shall be extended under the provisions of Section 385 of the said code, the highest civil court of appeal consists of a single

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judge, such judge shall have all the powers vested by such code in two or more judges of the sudder court.

No order or proceeding of such court to be void because passed or held by a single judge.

II. No order passed by or proceeding held before the single judge of any such highest civil court of appeal, subsequent to the extension of the Code of Civil Procedure to such part of the British territories in India, shall be deemed invalid or be liable to be questioned on the ground that such order or proceeding was passed by or held before a single judge.

A. D. 1864. ACT VIII.

AN ACT *to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company.*

Passed on the 2nd March 1864.

Preamble.

WHEREAS certain persons have formed themselves into a company at Paris for the transaction of banking business under the name of the "Comptoir D'Escompte of Paris:" and whereas the said company is constituted and established under and by virtue of various Imperial decrees of the French Government, notarial acts, and articles of agreement, whereby it is provided (amongst other things) that the said company may continue to exist and carry on business for a term of thirty years from the eighteenth day of March 1857; that the shareholders of the company shall be responsible only to the amount of their shares respectively, that the rights and liabilities attached to each share shall follow its transmission into whatever hands it may pass, and that the company may establish, on its own responsibility, and with the authority of the minister of finance, agencies in France and in French or foreign colonies, such agencies to be organized and conducted in the same manner as the Comptoir D'Escompte itself: and whereas agencies of the said company have been recently established in Calcutta and in Bombay: and whereas on the thirtieth day of April 1862, a Convention was concluded and signed at Paris between Her Majesty the Queen of Great Britain and Ireland and his Majesty the Emperor of the French, comprising the follow-

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ing articles, that is to say: "First—The high contracting parties declare that they mutually grant to all companies and other associations, commercial, industrial, or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions. Second—It is agreed that the stipulations of the preceding articles shall apply as well to companies and associations constituted and authorized previously to the signature of the present Convention as to those which may subsequently be so constituted and authorized. Third—The present Convention is concluded without limit as to duration. Either of the high powers shall however be at liberty to terminate it by giving to the other a year's previous notice. The two high powers moreover reserve to themselves the power to introduce into the Convention, by common consent, any modifications which experience may show to be desirable:" and whereas it is desirable that effect should be given to the said Convention so far as the Comptoir D'Escompte and its agencies now or hereafter established are concerned; it is enacted as follows:—

British India.

I. Unless the contrary appears from the context, in construing this Act, the words "British India" denote the territories which are or may become vested in Her Majesty the Queen by the Statute 21 and 22 Vic. Ch. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

Number.

Words importing the singular number include the plural number, and words importing the plural number include the singular number:

Gender.

Words importing the masculine gender include females:

Person.

The word "person" includes any company or association or body of persons whether incorporated or not.

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All suits and proceedings by, or on behalf of, or against, the Comptoir D'Escompte, shall be instituted in the name of, or against the chief manager for the time being of the agencies in British India, as the nominal plaintiff or defendant, and shall not abate, &c. on death or removal of such manager.

II. From and after the passing of this Act, all suits and other proceedings whatsoever, for any injury or wrong done to any real or personal property of the said Comptoir D'Escompte, in whomsoever the same may for the time being be vested, whether in the said company, or in some person or persons in trust for the said company, or upon or in respect of any present liability to the said Comptoir D'Escompte, or upon any bonds, covenants, contracts, or agreements which already have been or hereafter shall be given to or entered into with the said company, or to or with any person whomsoever in trust for the said Comptoir D'Escompte, or wherein the said Comptoir D'Escompte is or shall be interested, and also all instruments and petitions to found any adjudication of insolvency in any court against any person indebted to the said Comptoir D'Escompte, and liable to have been made insolvent by the laws now or at any time hereafter in force relating to insolvents in British India, and generally all other proceedings whatsoever to be commenced or carried on, by or on behalf of the said Comptoir D'Escompte, or wherein the said Comptoir D'Escompte is or shall be interested against any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir D'Escompte or not, shall and lawfully may be commenced and prosecuted in the name of the person who shall be the chief manager of the agencies in British India of the said Comptoir D'Escompte at the time such suit or proceeding shall be commenced, as the nominal plaintiff or petitioner for or on behalf of the said Comptoir D'Escompte, and all suits and proceedings, as well for subsisting as future accruing claims, debts, or demands to be commenced against the said Comptoir D'Escompte by any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir D'Escompte or not, shall be commenced and prosecuted against the said chief manager for the time being, as the nominal defendant or respondent for and on behalf of the said Comptoir D'Escompte, and the death, removal, resignation or any other act of such chief manager, or his bankruptcy or insolvency, shall not abate or prejudice any suit or other proceeding commenced under this Act, but

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the same may be continued, prosecuted and carried on or defended in the name of any other the chief manager for the time being of the said agencies.

In criminal proceedings, property whether vested in Comptoir D'Escompte or trustees, may be described as property of Comptoir or of chief manager.

III. From and after the passing of this Act, in all criminal proceedings instituted or carried on by or on behalf of the said Comptoir D'Escompte, for fraud or injury upon or against the said Comptoir D'Escompte, or for any offence whatever relating to any money, notes, bills, effects, securities, or any real or personal property of the said Comptoir D'Escompte, or for any other offence against the said Comptoir D'Escompte, it shall be lawful to state such money, notes, bills, effects and securities, and other real and personal property, in whomsoever the same may be vested, whether in the said Comptoir D'Escompte, or in some person or persons in trust for the said Comptoir D'Escompte, to be the money, notes, bills, effects and securities, or property of the said Comptoir D'Escompte, or of the chief manager for the time being of the agencies in British India of the said Comptoir D'Escompte; and any offence committed with intent to injure or defraud the said Comptoir D'Escompte, shall and lawfully may in such proceedings be said to have been committed with intent to injure or defraud the said Comptoir D'Escompte, or such chief manager for the time being as aforesaid, and any offender may thereupon be lawfully convicted of any such offence; and in all other proceedings in which, before the passing of this Act, it would have been necessary to state the names of the persons composing the said Comptoir D'Escompte, it shall be lawful and sufficient to state the name of such chief manager; and the death, resignation, or removal of such chief manager shall not abate or render defective, or in any wise affect or prejudice such criminal proceedings.

Actions against the Comptoir on contracts with it not to be defeated because plaintiff is a partner.

IV. No suit which may be commenced in any court in British India against the said Comptoir D'Escompte, or the chief manager for the time being of the agencies in British India of the said Comptoir D'Escompte, upon or arising out of any contract entered into by or on behalf of the said Comptoir D'Escompte, shall be in any wise affected or defeated by reason of the plaintiff therein, or of any other

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person who may be in any wise interested in such action, being a shareholder or partner of or in the said Comptoir D'Escompte; but any shareholder or partner of or in the said Comptoir D'Escompte shall have the same right of action and remedy to be proceeded in and enforced in the same manner against the said Comptoir D'Escompte, or such chief manager for the time being as aforesaid, upon any contract, and for any debt, damage, or demand whatsoever, which he might have had if he had been a stranger, and not a shareholder or partner of or in the said Comptoir D'Escompte.

Suit by Comptoir on contract not to be defeated because defendant is a partner.

V. No suit commenced by or on behalf of the said Comptoir D'Escompte in the name of the chief manager for the time being as aforesaid by virtue of this Act, upon or arising out of any contract whatsoever entered into by or on behalf of the said Comptoir D'Escompte, or for the recovery of any debt, damage, or demand whatsoever due or owing to the said Comptoir D'Escompte, or for any other cause or any other account, shall be in any wise affected or defeated by or by reason of the defendant therein, or any person or persons who may be in any wise interested in such suit, being a shareholder or partner of or in the said Comptoir D'Escompte, but the said Comptoir D'Escompte shall and may have the same right of suit and remedy to be proceeded in and enforced in the same manner against any shareholder or partner of or in the said Comptoir D'Escompte, either alone or jointly with any other person, upon any contract, and upon and for any debt, damage, or demand whatsoever, which the said Comptoir D'Escompte might have had if such cause of action had arisen with a stranger, and not with a shareholder or partner of or in the said Comptoir D'Escompte.

Chief manager to cause a memorial to be enrolled containing certain particulars.

VI. The chief manager of the agencies in British India of the said Comptoir D'Escompte shall have an office for the transaction of the business of the Comptoir D'Escompte. He shall cause a memorial, in the form and to the effect set forth in the Schedule A to this Act annexed, or as near thereto as the circumstances of the case will admit of, verified by a declaration in writing made by him before a judge

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of the high court of judicature within the jurisdiction of which his office is situated, to be enrolled amongst the records of the said high court. Such memorial shall, prior to being enrolled, be signed by the said chief manager, and shall be accompanied by or have annexed thereto, or endorsed thereon, copies of the decrees, notarial acts, articles, and other instruments under which the company is established, and copies of the various rules under which the business of the company is conducted. The memorial shall set forth the situation of the office of the chief manager, and of every other office and place in British India in or at which the business of the Comptoir D'Escompte is carried on; and it shall contain a statement of the amount both of the nominal and of the paid-up capital, the number of shares into which the capital is divided, the amount of each share, and the amount of capital (if any) which the Comptoir D'Escompte shall have set aside for their working capital in British India, and if the last mentioned capital be other than money, then a statement of how it stands invested, and in whose name.

Authority of chief manager to be authenticated.

VII. No memorial shall be enrolled unless the authority of the chief manager by whom it is signed, and the copies of the decrees, acts, deeds, and other documents accompanying the memorial, shall be authenticated by the signature and seal of the French Financial Minister, and countersigned by Her Britannic Majesty's Consul General in Paris for the time being.

Memorial of change in chief manager or in facts set forth in former memorial to be enrolled.

VIII. Whenever any new chief manager of the agencies in British India of the said Company shall be appointed, or any change in or addition to any of the facts stated in any memorial which may have been enrolled shall take place, a like memorial in the form and to the effect set forth in the Schedule B to this Act annexed, verified as aforesaid, shall within twelve calendar months after such appointment, change, or addition shall have been made, be enrolled as aforesaid, specifying the name and description of such new chief manager, and containing a statement of the change or addition which may have taken place in the facts aforesaid.

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False declaration an offence under the Penal Code.

IX. If any declaration made for the purpose of verifying a memorial under this Act shall be false or untrue in any material particular, the person wilfully making such declaration shall be guilty of an offence within the meaning of Section 199 of the Indian Penal Code.

Comptoir not to sue under this Act till after enrolment of memorial, and person named in last memorial to remain liable till fresh memorial is enrolled.

X. Until such memorial as first hereinbefore mentioned shall have been duly verified and enrolled, no action or suit shall be brought by the said Comptoir D'Escompte under the authority of this Act; and until the memorial by this Act required to be verified and enrolled in the event of the appointment of a new chief manager of the agencies in British India of the said Comptoir D'Escompte shall have been duly verified and enrolled, the person whose name shall appear in the last memorial which shall have been duly verified and enrolled, shall be liable to all such suits and executions upon judgment or decree and other proceedings under this Act, and in the same manner, as if he had not ceased to be such chief manager, and as if no new chief manager had been appointed.

Examined copy to be a proof of contents of memorial.

XI. An examined copy of every memorial enrolled pursuant to this Act, certified to be a true copy by and under the hand and signature of a registrar for the time being of the high court of judicature in which the same shall have been enrolled, shall be received in evidence as proof of the contents of such memorial; and proof shall not be required that the person by whom the memorial purports to be verified was, at the time of such verification, chief manager as aforesaid of the said agencies.

Judgment or order against chief manager how to be executed.

XII. Execution on every judgment, decree, and order made or pronounced in any suit or proceeding in any court in British India against the chief manager for the time being as aforesaid, shall and may be issued and enforced against any property in British India belonging to the Comptoir D'Escompte. All the provisions of the Code of Civil Procedure as to the attachment of property before judgment and after judgment, shall in all suits against the chief manager have full force and effect as regards property in British India belonging to the Comptoir D'Escompte. So long as the full amount recoverable by any person under

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any judgment, decree, or order shall not have been recovered, no execution issued from any court in British India, nor any thing in this Act, shall in any way prejudice or injure the right of such person to proceed in France, under the privileges and powers reserved to British subjects by and under the said Convention of the thirtieth of April 1862, for the recovery of the amount unrecovered.

XIII. No person having or claiming to have any demand upon or against the said Comptoir D'Escompte shall, when the same has been so determined as to have been pleadable in bar against such person, bring more than one suit in respect of such demand; and the proceedings in any suit which may have been brought against the chief manager for the time being of the agencies in British India of the said Comptoir D'Escompte under the authority of this Act, if so determined, may be pleaded in bar of any suit in any court in British India for the same cause against any other such chief manager; and in case of any demand which the said Comptoir D'Escompte now has or hereafter may have upon or against any person, whether a shareholder of the said Comptoir D'Escompte or not, and which shall have been determined in any action or suit commenced or prosecuted by the chief manager for the time being, the proceedings in such suit may be pleaded in bar of any other suit in any such court as aforesaid, for the same demand, which may be commenced or prosecuted by the same or any other such chief manager as aforesaid.

No person to bring more than one suit for the same demand against any chief manager, nor the Comptoir against any other person.

SCHEDULE A.

Referred to in Section VI. of this Act.

Memorial made the day of by the Chief Manager of the Agencies in British India of the Comptoir D'Escompte of Paris pursuant to Act VIII. of 1864 of the Governor-General of India in Council, intituled "An Act to enable the Comptoir D'Escompte of Paris to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company," setting forth the particulars prescribed by Section VI. of the said Act.

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Situation of Office of Chief Manager ... ...
Situation of other Offices and places in British India...
Entire Nominal Capital of the Company ... ...
Paid-up Capital... ... ...
Number of Shares ... ...
Amount of each Share ... ...
Amount of Capital set aside for operations in British India ... ...
Mode in which the same is invested ... ...
Name in which the same is invested ... ...

I, *A. B.*, Chief Manager of the agencies in British India of the Comptoir D'Escompte of Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above written memorial is true in all respects.

(Signed) A. B.

Declared, &c., before me, a Judge of the High Court of Judicature at

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SCHEDULE B.

Referred to in Section VIII. of this Act.

Memorial made the day of by the Chief Manager of the Agencies in British India of the Comptoir D'Escompte of Paris, pursuant to Act VIII. of 1864 of the Governor-General of India in Council, intituled "An Act to enable the Comptoir D'Escompte, &c. *(as in foregoing)*, setting forth particulars of change or changes as prescribed by Section VIII. of the said Act.

Name and description of new Chief Manager ...

or

New situation of Office of Chief Manager ...

or

Other change ... ...

I, *C. D.*, Chief Manager of the Agencies in British India of the Comptoir D'Escompte of Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above written memorial is true in all respects.

(Signed) C. D.

Declared before me, &c., &c. *(as before)*.

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A. D. 1864. ACT XVII.

AN ACT *to constitute an Office of Official Trustee.*

Passed on the 24th March 1864.

Preamble.

WHEREAS it is expedient to amend the law relating to official trustees, and to constitute an office of official trustee; it is enacted as follows:—

Interpretation.

I. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say:—

High Court.

The expression "high court" shall mean Her Majesty's high courts of judicature at Fort William in Bengal, Fort St. George, and Bombay respectively, in the exercise of their original civil jurisdiction.

Chief Justice.

The expression "chief justice" shall mean the chief justice or acting chief justice for the time being of any of the said high courts.

Person.

The word "person" shall include a corporation.

Number.

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Gender.

Words importing the masculine gender shall include females.

II. Repealed by Act XIV. of 1870.

Official trustee under Act XVII. of 1843 to act as if appointed under this Act, save as regards remuneration.

III. Every official trustee appointed under the said Act XVII. of 1843 shall, save as regards the remuneration to be received by him, hold and execute the trusts of which he is trustee in all respects as if he were an official trustee appointed under this Act.

An official trustee to be appointed in each presidency.

IV. In each of the presidencies of Fort William in Bengal, Fort St. George, and Bombay, there shall be an official trustee. The said official trustees shall be called the official trustee of Bengal; the official trustee of Madras, and the official trustee of Bombay respectively.

Appointment, sus-

V. Every official trustee appointed under this Act shall

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pension, and removal of official trustees.

be appointed and may be suspended or removed from his office by the authorities hereinafter named, that is to say:—

The official trustee of Bengal, by the chief justice of Her Majesty's high court of judicature at Fort William in Bengal.

The official trustee of Madras, by the chief justice of Her Majesty's high court of judicature at Fort St. George.

The official trustee of Bombay, by the chief justice of Her Majesty's high court of judicature at Bombay.

Administrator general may be appointed official trustee.

VI. The administrator general or officiating administrator general for the time being of any of the said presidencies, shall be eligible for the office of official trustee of that presidency.

Security to be given by official trustee.

Every official trustee appointed under this Act shall give security for the due execution of the duties of his office in such manner and to such amount as the chief justice by whom he is appointed shall direct.

Leave of absence of official trustee, and appointment of a person to officiate for him.

VII. It shall be lawful for the chief justice of the high court at any of the presidencies, from time to time to grant leave of absence to the official trustee of that presidency, but subject always to such and the like rules as may be for the time being in force as to leave of absence of the officers attached to such high court. Whenever any official trustee shall obtain leave of absence, it shall be lawful for the chief justice to appoint some person to officiate as official trustee, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the official trustee, and he shall be deemed to be the official trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed official trustee.

Official trustee may, with his consent, be appointed trustee of a settlement by grantor, &c.

VIII. If any person shall be about to grant, assign, or settle any property movable or immovable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the official trustee, to appoint him, by the deed creating the trust, to be the trustee of such settlement; and upon such appointment, the property so

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granted, assigned, or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed. Provided always that the consent of the official trustee shall be recited in the said deed, and that the deed shall be duly executed by the official trustee: provided also that no trust for any religious purpose shall ever be held by the official trustee under this or under any other section of this Act.

Official trustee appointed under last preceding section, to receive only the remuneration specified in the deed.

IX. Every official trustee appointed trustee of any property under the last preceding section, shall be entitled to receive by way of remuneration in that behalf, such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Under what other circumstances official trustee may be appointed trustee of any property.

X. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof, who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the high court, or if property is subject to a trust, and all the trustees, or the surviving or continuing trustee, and all the persons beneficially interested in the said trust, shall be desirous that the official trustee shall be appointed in the room of such trustees or trustee, then and in any such case it shall be lawful for the high court on petition, and with the consent of the official trustee, to appoint the official trustee to be the trustee of such property: and upon such appointment such property shall vest in the official trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

Rate of commission under last preceding section.

XI. The official trustee shall be entitled by way of remuneration, in respect of all trust property transferred to him under the last preceding section, to a commission the rate of which shall be as follows, that is to say,—

On all capital monies received by him, a commission of one half per cent. on receiving the same.

On all capital monies invested by him, a commission of one half per cent. on investing the same.

On all sums received by him by way of interest or divi-

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dends in respect of monies invested, a commission of three quarters per cent.

On all rents collected by him, a commission of two and a half per cent.

What expenses, &c. commision to cover.

XII. The official trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust monies in his hand. The commission to which the official trustee shall be entitled, is intended to cover all the expenses and risk and responsibility of management, collection, and distribution.

In all cases official trustee to be sole trustee.

XIII. It shall in no case be lawful to appoint the official trustee to be a trustee along with any other person; but the official trustee shall always be sole trustee.

In what securities official trustee to invest trust money.

XIV. The official trustee shall cause all capital monies received by him to be invested in government securities, or otherwise as the court shall direct; and if in any case the trust funds, or any part of them, shall at the time of their vesting in the official trustee be invested otherwise than as provided in the deed or will creating the trust, or than as ordered by the court, it shall be the duty of the official trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in government securities or otherwise as the court shall direct.

High Court may make orders respecting trust property vested in official trustee.

XV. The high court may make any such orders as shall seem to it necessary respecting any trust property vested in the official trustee, or the interest or produce thereof. All such orders shall be made on petition, unless the court shall direct a suit to be instituted.

Re-transfer of trust property to original, or transfer to other trustee.

XVI. Nothing in this Act shall prevent the re-transfer of any trust property which may have become vested in the official trustee, to the original or any subsequently appointed trustee, or to such person as the court shall direct, unless otherwise provided by the deed or will creating the trust.

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XVII. All orders which shall be made appointing any official trustee to act as trustee in virtue of his office, shall appoint him by his name of office, and shall authorize the official trustee for the time being of the same presidency to act as official trustee of the property to which such order shall relate; and all property and interests which at the time of the death, resignation, or removal from office of any official trustee shall be vested in him by virtue of such order, shall upon such death, resignation, or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto; and all books, papers, and documents kept by such official trustee by virtue of his office, shall be transferred to and vested in his successor in office.

Order of appointment of official trustee.

On death, &c. of official trustee, property to vest in his successor.

XVIII. All actions, suits, or other proceedings which shall be commenced by or against any official trustee in his official character, may be brought by or against him by his name of office, and no suit, action, or other proceeding already commenced, or which shall be commenced by or against any person as official trustee either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from office of any such official trustee, but the same may by order of the court, and upon such terms as to the service of notices or otherwise as the court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation, or removal had occurred. Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an official trustee who has resigned or been removed from his office, or the heirs, executors, administrators, or representatives of a deceased official trustee, from being liable for any such costs.

Official trustee to sue or be sued by his name of office.

Suit not to abate by death, &c.

Proviso.

XIX. Every official trustee appointed under this Act shall enter into books to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods, and things, as shall come to his hands, or

Official trustee to keep a separate account of each trust, to be open to the inspection of the chief justice, and of any person authorized by

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him to demand inspection.

to the hands of any person employed by him, or in trust for him under this Act, and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively, which said books shall be kept in the official trustee's office, and shall be at all times open for the inspection of the chief justice and of any person authorized by him to demand inspection thereof.

Chief justice may make and alter rules and orders for custody of trust funds, &c.

XX. The chief justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act, for the safe custody of the trust funds and securities which shall come to the hands or possession of the official trustee, and for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases, where such remittances shall be required, and generally for the guidance and government of the official trustee in the discharge of his duties; and may by such rules and orders, amongst other things, direct what books, accounts, and statements in addition to those mentioned in this Act, shall be kept by the official trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust of which the official trustee is the trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

Publication of orders, &c.

XXI. Such orders shall be published in the official Gazette, and it shall be the duty of the several official trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Official trustee to furnish annual schedules which shall be filed in the High Court.

XXII. The official trustee of each of the said presidencies shall once in every year, that is to say on the first day of March, or on such other day as the chief justice shall direct, deliver to the chief justice a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first

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day of December next before the day of delivering such schedule, and a true list of all securities received on account of each of the said trusts during the same period; and also a true schedule of all trusts which shall have come to an end or of which the official trustee shall have ceased to be the trustee, and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property, and the persons to whom paid or made over. The chief justice shall cause the said schedules to be filed as record in the high court; but it shall not be lawful for any person to inspect the same, or to make copies thereof or of any part thereof, except on an order granted by the chief justice permitting him so to do.

Inspection of schedules so filed.

XXIII. The chief justice shall from time to time appoint an auditor or auditors to examine the accounts of the official trustee at the time of the delivery of the said schedules, and also at any other time when the chief justice shall think fit.

Chief justice to appoint auditors.

XXIV. The auditor or auditors shall examine the schedules and accounts, and report to the chief justice whether they contain a full and true account of every thing which ought to be inserted therein, and whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be directed to be kept by the official trustee, have been duly and regularly kept, and whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditors to examine schedules and accounts of official trustee and to report to chief justice.

XXV. Every auditor shall have power to summon as well the official trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and to examine the official trustee or other party or parties, if he shall think fit, on oath or solemn affirmation, to be by him administered; and to call for all books, papers, vouchers, and documents, which shall appear to him to be necessary for the purposes of the said reference; and if the official trustee or other person or persons when summoned

Auditors to have power to summon witnesses and to call for books, &c.

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shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher, or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the high court; and every person so refusing or neglecting shall thereupon be punishable, in like manner as if such refusal or neglect had been in contempt of the said high court.

Penalty for refusal or neglect to attend, &c. to produce books, &c.

Costs of preparing schedules, &c., how to be paid.

XXVI. The costs and expenses of preparing the said schedules and accounts, and of every such reference and examination as aforesaid, shall be defrayed by all the trust estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the chief justice, and shall be paid out of the said estates accordingly by the official trustee.

Matters to be reported by auditors.

XXVII. If upon any such reference and examination the auditor or auditors shall see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or that the trust funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or that the official trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders, he or they shall report accordingly to the chief justice.

Proceedings upon such report.

XXVIII. The chief justice may refer every such report as last aforesaid to the consideration of the advocate general for the presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the high court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust estates then or formerly under the charge of such defaulter; and the court shall have power, upon any such petition, to compel the attendance in court of

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the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said court shall think fit, and to make and enforce such order or orders as the court shall think just.

Costs upon such proceedings, &c. how to be defrayed.

XXIX. The costs, including those of the advocate general, and of the reference to him, if the same shall be directed by the court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust estates rateably as the said court shall direct; and whenever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the court shall have power to order the official trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Orders of the High Court to have same effect, and to be executed in the same manner, as decrees.

XXX. Any orders which shall be made by any of the said high courts shall have the same effect and be executed in the same manner as decrees.

Who may apply for order under this Act.

XXXI. Any order under this Act may be made on the application of any person beneficially interested in any trust property, or of any trustee thereof, whether under disability or not.

Executor or administrator may, by leave of the High Court, pay to official trustee legacy, share, &c., to which an infant or lunatic is entitled.

XXXII. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue, or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue, or share, to pay or transfer the same to the official trustee appointed under this Act; provided that the leave of the high court to make such payment or transfer shall be first obtained by motion made on petition. Any money or property paid or transferred to the official trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such official trustee under the provisions thereof.

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A. D. 1864. ACT XXVI.

AN ACT *to extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts.*

Passed on the 14th April 1864.

Preamble. WHEREAS it is expedient to increase the limit of the jurisdiction of the Courts of Small Causes held under Act IX. of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay,*) and to increase the number of judges of the said courts; it is enacted as follows:—

Interpretation. I. The words "Local Government" and "High Court" as used in this Act, shall bear respectively the same meaning as the words "Governor in Council" and "Supreme Court," as used in the said Act IX. of 1850.

Courts held under Act IX. of 1850 may take cognizance of suits for sums not exceeding one thousand rupees. II. The jurisdiction of the courts held or to be held under the said Act IX. of 1850 shall extend to the recovery of any debt, damage, or demand exceeding the sum of five hundred rupees but not exceeding the sum of one thousand rupees, and to all actions in respect thereof (except the several actions specified in the proviso in Section XXV. of the same Act), provided that the cause of action shall have arisen, or the defendant at the time of bringing the action shall dwell or carry on business or personally work for gain within the local limits of the jurisdiction of the court.

Such courts may take cognizance of suits for sums exceeding one thousand rupees, if the parties consent. III. If both parties shall agree by a memorandum signed by them or by their attornies and filed with the clerk of the Court of Small Causes, that the said court shall have power to try any action (not included in the proviso in Section XXV. of Act IX. of 1850,) in which the debt or damage claimed, or value of the property in dispute, whether on balance of account or otherwise, shall exceed the sum of one thousand rupees, then and in such case the said court shall have jurisdiction to try such action.

Powers under Act VII. of 1847 extend- IV. The powers and provisions of Act VII. of 1847 (*to regulate distresses for small rents in Calcutta*) shall be ex-

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tended to the recovery of all arrears of rent not exceeding one thousand rupees, and the judges of the Calcutta Court of Small Causes under Act IX. of 1850 shall be empowered to exercise within their jurisdiction the extended powers of the said Act VII. of 1847: and the said Act shall be construed as if, instead of Calcutta and the settlement of Fort William in Bengal, the limits of the jurisdiction of the court had been therein mentioned, and the judges of the Calcutta Court of Small Causes under Act IX. of 1850, instead of the commissioners of the court therein mentioned, and the amount of one thousand rupees instead of one hundred rupees, and the forms contained in the schedule annexed to the said Act VII. of 1847 shall be altered accordingly, and shall refer to Act IX. of 1850 and to this Act instead of to Act VII. of 1847.

ed to recovery of arrears of rent not exceeding one thousand rupees, and the Calcutta Court of Small Causes to exercise such powers.

V. The powers and provisions of Section XCI. of Act IX. of 1850 are hereby extended so as to apply to the case of any person who shall hold or occupy any house, land, or tenement of which the value or the rent payable in respect thereof does not exceed the rate of one thousand rupees by the year, and the said Section XCI. of Act IX. of 1850 shall be read as if the words "five hundred" were omitted, and the words "one thousand" substituted for them.

Provisions of Section XCI, Act IX. of 1850, extended to tenements not exceeding in value one thousand rupees.

VI. The several powers and provisions of the said Act IX. of 1850, and all rules, orders, and regulations which have been or may be made in pursuance of the said Act, shall extend to all debts, damages, and demands which may be sued for in the said courts exceeding the sum of five hundred rupees, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively are now or may be applicable to debts, damages, and demands within the present jurisdiction of the said courts.

Provisions of Act IX. of 1850 and all rules, &c., made in pursuance thereof, extended to demands under this Act.

VII. If any cause of an amount exceeding five hundred rupees, the judges of the said Courts of Small Causes shall reserve any question of law or equity, or any question as to the admission or rejection of any evidence as to which they shall entertain any doubts, or which they shall be requested

In what cases questions to be reserved for the opinion of the High Court.

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by either party to the suit to reserve, for the opinion of the high court, and shall give judgment contingent upon the opinion of the said high court, on a case which they shall thereupon be entitled to state to the said court. If only two judges sit together and shall differ in opinion, the question on which they differ shall be so reserved.

Security to be given in certain cases when question is reserved for the opinion of the High Court.

VIII. When judgment is given contingent upon the opinion of the high court, the party against whom such judgment is given shall, unless he be willing to submit to such judgment, forthwith give security, to be approved by the clerk of the court, for the costs of the reference to the high court and for the amount of the judgment; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the Court of Small Causes who tried the suit shall have ordered the defendant to pay the amount of such judgment into the hands of the clerk of the said court, and the same shall have been paid accordingly; and the said high court may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party as the case may be, and may make such order with respect to the costs of reserving the question and stating the same for their opinion, and otherwise arising thereout or connected therewith, as such high court may think proper. And all orders made by the high court under this section shall be final.

Costs arising from reserving the question to be at the discretion of the High Court.

No costs in cases brought in the High Court when verdict is for less than a certain amount.

IX. If any action shall after the passing of this Act be commenced in the high court, for any cause other than those specified in Section C. of Act IX. of 1850, for which a summons might have been taken out from a court held under the said Act IX. of 1850 or under this Act, and in which such court would have had jurisdiction, and if a verdict shall be found for the plaintiff for a sum less than one thousand rupees if the said action is founded on contract, or less than three hundred rupees if it is founded on wrong, the plaintiff shall have judgment to recover such sum only and no costs, and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the

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case shall certify that by reason of the difficulty, novelty or general importance of the case, or of some erroneous course of decisions in like cases in the Court of Small Causes, the action was fit to be brought in the high court.

No costs to be allowed in suit in High Court against officer of court held under Act IX. of 1850, if verdict for no more than one thousand rupees, unless judge shall certify.

X. If any person shall bring any suit in the high court in respect of any grievance committed by the clerk, bailiff or officer of any court held under Act IX. of 1850 or under this Act, or under color or pretence of the process of the said court, and upon the trial of the action no greater damages shall be found for the plaintiff than the sum of one thousand rupees, no cost shall be awarded to the plaintiff in such action unless the judge shall certify in court that the action was fit to be brought in the high court.

Fees payable in the Courts of Small Causes in suits under this Act.

XI. There shall be payable in the Court of Small Causes at Calcutta, Madras, and Bombay respectively, in every cause of an amount to which jurisdiction is given to the said court by this Act, the fees set forth in the schedule hereto annexed besides the sum of two annas in each rupee of the amount sued for, so far as such amount does not exceed five hundred rupees, and one anna in the rupee so far as such amount exceeds five-hundred rupees, which fee shall be paid over to the same account as that to which the fees payable under Section XIX. of Act IX. of 1850 are paid over.

Local Governments, with the sanction of the Governor-General of India, to appoint as many judges as may be necessary.

XII. Whereas by Section VIII. of the said Act IX. of 1850, provision is made for the appointment of so many persons as may be necessary not exceeding three, to be judges of the said Courts of Small Causes respectively, it is hereby enacted that it shall be lawful for the local Government with the previous sanction of the Governor-General of India in Council, to appoint as many persons as may be necessary to be judges of the said courts respectively.

Fees payable to barristers and attornies in suits tried under this Act.

XIII. The fees to be taken by barristers at law and attornies practising in the said courts in cases brought within the jurisdiction given by this Act, shall be as follows :—an attorney shall be entitled to have or recover a sum not exceeding fifty-one rupees for his fees and costs, and in no case shall any fee exceeding eighty-five rupees be allowed for employing a barrister as counsel in the cause. The ex-

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pense of employing a barrister or an attorney, or both a barrister and an attorney, either by plaintiff or defendant, shall not be allowed as costs, unless by order of the judge, and the judges of the said court shall determine in what cases such expenses shall be so allowed.

One of the judges appointed under Act IX of 1850 to be styled first judge; and to arrange the distribution of business among the judges.

XIV. Of the judges appointed under Section VIII. of the said Act IX. of 1850, the one who is a barrister at law or advocate of one of the high courts of India, or of the court of session of Scotland, shall be styled the first judge. The first judge shall make such arrangements as he shall think fit, with regard to the distribution of the suits and of the general business of the court among the various judges thereof: and he may vary such arrangements from time to time.

Code of Civil Procedure may be extended to Small Cause Courts.

XV. The local Government may with the sanction of the Governor-General of India in Council, declare that the whole or any part or parts of the Code of Civil Procedure shall be applicable to any court held under Act IX of 1850 or under this Act: and the procedure prescribed in the said code or the part or parts thereof so declared to be applicable, shall thereupon be the procedure followed in such court. Provided that no right of appeal or review shall in any case be given by any declaration made under this section.

This Act to be read as part of Act IX. of 1850.

XVI. This Act and the said Act IX. of 1850 shall be read and construed as one Act, as if the several provisions in the said Act contained, not inconsistent with the provisions of this Act, were repealed and re-enacted in this Act.

SCHEDULE OF FEES.

Sums not above	Every Summons or Subpœna.		Warrant.	
Rs.	Rs.	As.	Rs.	As.
600	2	4	6	0
700	2	8	7	0
800	2	12	8	0
900	3	0	9	0
1000	3	4	10	0

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A. D. 1865. ACT III.

An Act relating to the rights and liabilities of Common Carriers.

Passed on the 14th February 1865.

Preamble.

WHEREAS it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; it is enacted as follows:—

Short title.

I. This Act may be cited as "The Carriers' Act, 1865."

Interpretation clause.

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

Common carrier.

"Common carrier" denotes a person other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.

Person.

"Person" includes any association or body of persons, whether incorporated or not.

Number.

Words in the singular number include the plural, and words in the plural include the singular.

Carriers not to be liable for loss of certain goods above 100 rupees in value, unless delivered as such.

III. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

For carrying such property, payment may be required at rates fixed by carrier.

Proviso.

IV. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix: Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be

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carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

V. In case of the loss of or damage to property exceeding in value one hundred rupees, and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

In respect of what property liability of carrier not limited or affected by public notice.

Carriers, with certain exceptions, may limit liability by special contract.

VI. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII. of 1863 *(to provide for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken)* may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Liability of owner of railroad or tramroad constructed under Act XXII. of 1863, not limited by special contract.

In what case owner of railroad or tramroad answerable for loss or damage.

VII. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII. of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

VIII. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from

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the negligence or criminal act of the carrier or any of his agents or servants.

Plaintiffs, in suits against common carriers for loss, damage, or non-delivery, not required to prove negligence or criminal act.

IX. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Saving of provisions of Sections 9, 10, and 11 of Act XVIII. of 1854.

X. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854 *(relating to Railways in India.)*

SCHEDULE.

Gold and silver coin.
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bill and hundis.
Currency notes of the Government of India, or notes of any banks, or securities for payment of money, English or foreign.
Stamps and stamped paper.
Maps, prints, and works of art.
Writings.
Title deeds.
Gold or silver plate or plated articles.
Glass.
China.
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals, or of which such metals form part.
Articles of ivory, ebony, or sandal-wood.

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A. D. 1865. ACT X.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Passed on the 16th March 1865.

Preamble. WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; it is enacted as follows:—

PART I.

Preliminary.

Short title. I. This Act may be cited as "The Indian Succession Act, 1865."

This Act to constitute the law of British India in cases of intestate or testamentary succession. II. Except as provided by this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

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

Number. Words importing the singular number include the plural; words importing the plural number include the singular:

Gender. and words importing the male sex include females.

Person. "Person" includes any company or association, or body of persons, whether incorporated or not.

Year. Month. "Year" and "Month" respectively mean a year and month reckoned according to the British calendar.

Immovable property. "Immovable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

Movable property. "Movable property" means property of every description except immovable property.

Province. "Province" includes any division of British India having a court of the last resort.

British India. "British India" means the territories which are or may become vested in Her Majesty or her successors by the

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Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*) other than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"District Judge" means the judge of a principal civil court of original jurisdiction. District Judge.

"Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person. Minor. Minority.

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death. Will.

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to it dispositions. It is considered as forming an additional part of the will. Codicil.

"Probate" means the copy of a will certified under the seal of a court of competent jurisdiction, with a grant of administration to the estate of the testator. Probate.

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided. Executor.

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor. Administrator.

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorised by law to administer executive government in such part; and "High Court" shall mean the highest civil court of appeal therein. Local Government. High Court.

IV. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. Interests and powers not acquired nor lost by marriage.

PART II.

Of Domicile.

V. Succession to the immovable property in British India of a person deceased is regulated by the law of British India Law regulating succession to a deceased person's immovable

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and movable property respectively.

wherever he may have had his domicile at the time of his death. Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(*a.*) A, having his domicile in British India, dies in France, leaving movable property in France, movable property in England, and property, both movable and immovable, in British India. The succession to the whole is regulated by the law of British India.

(*b.*) A, an Englishman having his domicile in France, dies in British India, and leaves property both movable and immovable, in British India. The succession to the movable property is regulated by the rules which govern, in France, the succession to the movable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

One domicile only affects succession to movables.

VI. A person can only have one domicile for the purpose of succession to his movable property.

Domicile of origin of person of legitimate birth.

VII. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

VIII. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

IX. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

X. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling

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Illustrations.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

XI. Any person may acquire a domicile in British India by making and depositing in some office* in British India (to be fixed by the Local Government), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence in a country merely as the representative of a foreign Government, or by residence with him as part of his family or as a servant.

XII. A person who is appointed by the Government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter

* The Chief Secretary's Office has been appointed for this.—*Govt. Gaz.* 21*st* July 1866, p. 101.

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country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

XIII. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

XIV. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by a woman on marriage.

XV. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

XVI. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent court, or if the husband is undergoing a sentence of transportation.

Except in cases stated, minor cannot acquire a new domicile.

XVII. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

XVIII. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to a person's movable property in British India, in absence of proof of his domicile elsewhere.

XIX. If a man dies leaving movable property in British India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

Of Consanguinity.

Kindred or consanguinity.

XX. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

XXI. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-

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grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

XXII. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to the deceased.

XXIII. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

XXIV. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

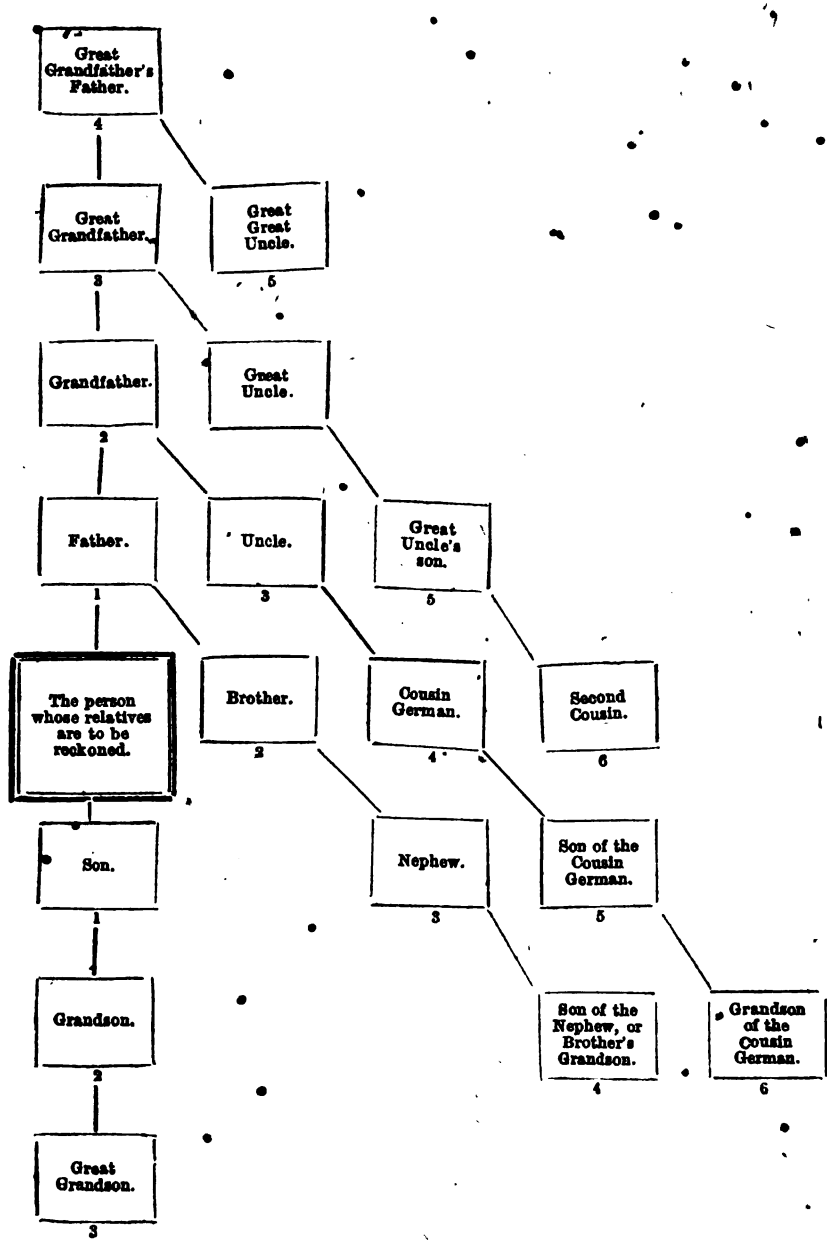
The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

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TABLE OF CONSANGUINITY.



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PART IV.

Of Intestacy.

As to what property a deceased person is considered to have died intestate.

XXV. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(a.) A has left no will. He has died intestate in respect of the whole of his property.

(b.) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(c.) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l.* to B, and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without ever having had a son. A has died intestate in respect of the distributjon of 1,000*l.*

Devolution of such property.

XXVI. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

Where the intestate has left a widow and lineal descendants, or a widow and kindred only, or a widow and no kindred.

XXVII. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained. If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where the intestate has left no widow, and where he has left no kindred.

XXVIII. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and if he has left none who are of kindred to him, it shall go to the crown.

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PART V.

Of the Distribution of an Intestate's Property.

(*a*) *Where he has left lineal descendants.*

Rules of distribution.

XXIX. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants, are as follows:—

Where the intestate has left a child or children only.

XXX. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where the intestate has left no child, but a grandchild or grandchildren.

XXXI. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(*a*) A has three children, and no more; John, Mary, and Henry. They all died before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b*) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where the intestate has left only great-grandchildren or lineal descendants in a remoter degree.

XXXII. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where the intestate leaves lineal descendants not all in the same degree of kindred to him and those through whom the more remote descend are dead.

XXXIII. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number

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of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendant shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a) A had three children, John, Mary, and Henry; John died leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b) *Where the Intestate has left no lineal descendants.*

Rules of distribution where the intestate has left no lineal descendants.

XXXIV. Where as intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Where intestate's father is living.

XXXV. If the intestate's father be living, he shall succeed to the property.

Where intestate's father is dead but his

XXXVI. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters

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mother, brothers and sisters are living.

of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

Where intestate's father is dead and his mother, a brother or sister, and children of any deceased brother or sister are living.

XXXVII. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where intestate's father is dead and his mother and the children of any deceased brother or sister are living.

XXXVIII. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

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XXXIX. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister nor child of any brother or sister of the intestate, the property shall belong to the mother.

Where intestate's father is dead, but his mother is living and there is no brother nor sister nor nephew.

XL. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant nor father nor mother.

XLI. If the intestate left neither lineal descendant nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent, nor brother nor sister.

Illustrations.

(*a*) A, the intestate, has left a grand-father and a grand-mother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

XLII. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not to be brought into hotchpot.

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PART VI.

Of the Effect of Marriage and Marriage Settlements on Property.

Rights of widower and widow respectively.

XLIII. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

No rights to property not comprised in an ante-nuptial settlement, acquired by marriage between a person domiciled and a person not domiciled in British India.

XLIV. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

XLV. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father or if he be dead or absent from British India with the approbation of the high court.

PART VII.

Of Wills and Codicils.

Persons capable of making wills.

XLVI. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

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Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b*) A executes an instrument purporting to be his will but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his will. This is a valid will.

Testamentary guardian.

XLVII. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion or importunity.

XLVIII. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's favor; such will has been obtained by fraud, and is invalid.

(*b*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f*) A being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A

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in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h*) A with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

XLIX. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.

Of the Execution of unprivileged Wills.

Execution of unprivileged wills.

L. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First. The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second. The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third. The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

LI. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expres-

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ing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged will.

LII. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b*) A is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing privileged wills.

LIII. Privileged wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

First. The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second. It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third. If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be

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shown that it was written by the testator's directions, or that he recognized it as his will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth. If the soldier or mariner shall have written instructions for the preparations of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth. If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth. Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh. A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

Effect of gift to attesting witness.

LIV. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

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Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

LV. No person, by reason of interest in or of his being an executor of a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

LVI. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

LVII. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a*) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b*) A has made an unprivileged will. Afterwards, A being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation, or alteration in unprivileged will.

LVIII. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the

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subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

LIX. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

LX. No unprivileged will or codicil, nor any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

PART XI.

Of the Construction of Wills.

Wording of will.

LXI. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Enquiries to determine questions as to

LXII. For the purpose of determining questions as to what person or what property is denoted by any words used

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in a will, a court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used. object or subject of will.

Illustrations.

(*a*) A, by his will bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A court may make inquiry in order to ascertain to what person the description in the will applies.

(*b*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

LXIII. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect. A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name. Misnomer or misdescription of object.

Illustrations.

(*a*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

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(*e*) The testator having six grandchildren, makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

LXIV. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

LXV. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(*b*) The testator bequeaths to A "his zamindari of Rampore." He had an estate at Rampore, but it was a taluk and not a zamindari. The taluk passes by this bequest.

When part of description may not be rejected as erroneous.

LXVI. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

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Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh lands lying in L, some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh lands lying in L, as were in the occupation of X, shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

LXVII. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a*) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

LXVIII. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the sev nty-sixth section.

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(*b*) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A bequeaths to B " rupees," or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of any clause to be collected from entire will.

LXIX. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A."

(*b*) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

When words may be understood in a restricted sense, and when in a sense wider than usual.

LXX. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(*b*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever

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kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Where a clause is open to two constructions, that which has some effect is to be preferred.

LXXI. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part of Will to be rejected, if reasonable construction can be put on it.

LXXII. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

LXXIII. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Testator's intention to be effectuated as far as possible.

LXXIV. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C D.

The last of two inconsistent clauses prevails.

LXXV. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a*) The testator by the first clause of his will leaves his estate of Rámnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

LXXVI. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testater says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,' or the like," without saying how much, this is void.

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Words describing subject refer to property answering that description at testator's death.

LXXVII. The description contained in a will, or property the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Power of appointment executed by general bequest.

LXXVIII. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

Implied gift to the objects of a power in default of appointment.

LXXIX. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c., of a particular person without qualifying terms.

LXXX. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died in

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testate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life, and after the death of B, to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c) A leaves his property to B; but if B dies before him, to B's next of kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to 'representatives,' &c., of a particular person.

LXXXI. Where a bequest is made to the "representatives" or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

LXXXII. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest in the alternative.

LXXXIII. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons;—if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

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Illustrations.

(*a*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(*f*) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(*g*) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to a bequest to a person.

LXXXIV. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(*a*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators,

In each of these cases, A takes the whole interest which the testator had in the property.

(*b*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(*c*) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

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Bequest to a class of persons under a general description only.

LXXXV. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

LXXXVI. The word "children" in a will applies only to lineal descendants in the first degree; the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of; the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins" or "first cousins," or "cousins-german" apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins german" are spoken of; the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or failing such relatives reputed legitimate.

LXXXVII. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(*a*) A, having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares, to the exclusion of D.

(*b*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

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(c) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to 'his said children.' B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to the 'children of B.' B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B, are objects of the gift.

(e) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had at the date of the will acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the will the reputation of being the child of A by the woman designated. B takes the legacy.

(g) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where a will purports to make two bequests to the same person.

LXXXVIII. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make in two places a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word 'will' does not include a codicil.

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Illustrations.

(*a*) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A by his will bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i*) A by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

Constitution of residuary legatee.

LXXXIX. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to B, now at

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school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which a residuary legatee is entitled.

XC. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A by his will bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

Time of vesting of legacy in general terms.

XCI. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

In what case a legacy lapses.

XCII. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a*) The testator bequeaths to B 500 rupees which B owes him. B dies before the testator; the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c*) A legacy is given to A, and in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

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(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

A legacy does not lapse if one of two joint legatees die before the testator.

XCIII. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

Effect in such a case of words showing testator's intention that the shares should be distinct.

XCIV. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

XCV. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When a bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

XCVI. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

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Illustration.

A makes his will, by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for the benefit of B does not lapse by A's death in testator's lifetime.

XCVII. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to a described class.

XCVIII. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

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(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(*f*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not any child. The bequest after the death of B is void.

(*g*) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(*h*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

Of void Bequests.

Bequest to a person by a paticular description, who is not in existence at the testator's death.

XCIX. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead, to his representatives.

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B has no son. The bequest is void.

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(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B a son named D is born to C. D dies, then B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

C. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marry under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

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(d) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

CI. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(a) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c) A fund is bequeathed to A for his life, and after his death to B for his life; with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any

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daughter of the testator to whom the direction applies] must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under the rules in Sections 100 and 101.

CII. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in Illustration (*a*). The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under Section 100, 101 or 102.

CIII. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A shall attain that age, to B. A and B survive the testator. The bequest

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to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

CIV. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed. Effect of direction for accumulation.

Exception.—Where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations shall then be divided between A, B and C. A, B and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b*) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d*) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

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Bequest to religious or charitable uses.

CV. No man having a nephew or niece or any nearer relative, shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustration.

A having a nephew makes a bequest by a will not executed nor deposited as required—

For the relief of poor people;
For the maintenance of sick soldiers;
For the erection or support of a hospital;
For the education and preferment of orphans;
For the support of scholars;
For the erection or support of a school;
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.

All these bequests are void.

PART XIII.

Of the vesting of legacies.

Date of vesting of legacy when payment or possession postponed.

CVI. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives.

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or from a provision that if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be devested in case A, B and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy is contingent upon a specified uncertain event.

CVII. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(*g*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age.

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(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when she shall attain the age of 18 or shall marry under that age with the consent of B, with a proviso that if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leases his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

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CVIII. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in a bequest to such members of a class as shall have attained a particular age.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

Of Onerous Bequests.

CIX. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

Illustration.

A having shares in (X) a prosperous joint stock company, and also shares in (Y) a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

CX. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and the other refused.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

Of Contingent Bequests.

CXI. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect

Bequest contingent upon a specified uncertain event, no time being mentioned for its occurrence.

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unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(*a*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and in case of his death without children, to B. If A survives the testator or dies in his lifetime, leaving a child, the legacy to B does not take effect.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children," are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and after his death to B, and "in case of B's death" to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

Bequest to such of certain persons as shall be surviving at some period not specified.

CXII. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Illustrations.

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life and after his death to B and C, or the survivor, with a direction that if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representatives of B.

(*d*) Property is bequeathed to A for life, and after his death to B and C, with a direction that in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

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PART XVI.

Of Conditional Bequests.

CXIII. A bequest upon an impossible condition is void. Bequest upon impossible condition.

Illustrations.

(*a*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

CXIV. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void. Bequest upon illegal or immoral condition.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

CXV. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with. Fulfilment of condition precedent to the vesting of a legacy.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B,

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C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A and on failure of the prior bequest to B.

CXVI. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

Case in which the second bequest shall not take effect on failure of the first.

CXVII. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon the happening or not happening of a specified uncertain event.

CXVIII. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another per-

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son. In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be devested and to go to B in case A shall die under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Condition must be strictly fulfilled.

CXIX. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(*a*) A legacy is bequeathed to A with a proviso that if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C the gift to E does not take effect.

(*b*) A legacy is bequeathed to A with a proviso that if he marries without the consent of B the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A to be paid at 18 or marriage, with a proviso that if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18 without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

CXX. If the ulterior bequest be not valid, the original bequest is not affected by it.

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Illustrations.

(*a*) An estate is bequeathed to A for his life with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void A retains his estate as if no condition had been inserted in the will.

(*b*) An estate is bequeathed to A for her life and if she do not desert her husband to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c*) An estate is bequeathed to A for life, and if he marries to the eldest son of B for life. B at the date of the testator's death had not had a son. The bequest over is void under Section 92 and A is entitled to the estate during his life.

Bequest conditional that it shall cease to have effect in case a specified uncertain event shall happen or not happen.

CXXI. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a proviso that in case he shall cut down a certain wood the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b*) An estate is bequeathed to A, provided that if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*) An estate is bequeathed to A, provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d*) An estate is bequeathed to A, with a proviso that if she becomes a nun she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under Section 107.

CXXII. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

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CXXIII. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing an act for which no time is specified and on the non-performance of which the subject-matter is to go over.

Illustrations.

(*a*) A bequest is made to A with a proviso that unless he enters the army the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

CXXIV. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Performance of condition, precedent or subsequent, within specified time.

Further time allowed in case of fraud.

PART XVII.

Of Bequests with Directions as to Application or Enjoyment.

CXXV. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in a particular manner following an absolute bequest of the same to or for the benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

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Direction that a mode of enjoyment of absolute bequest is to be restricted, to secure a specified benefit for the legatee.

CXXVI. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(*a*) A bequeathes the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried; the representatives of each daughter are entitled to her share of the residue.

(*b*) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without ever having had a child. Her representatives are entitled to the fund.

Bequest of a fund for certain purposes, some of which cannot be fulfilled.

CXXVII. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(*a*) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(*b*) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

Of Bequests to an Executor.

Legatee named as executor cannot take unless he shews intention to act as executor.

CXXVIII. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

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Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

Of Specific Legacies.

A specific legacy defined.

CXXIX. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(a) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods, which shall be in or about his dwelling-house in M Street, in Calcutta, at the time of his death."

"The sum of 1,000 rupees in a certain chest."

"The debt which B owes him."

"All his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta."

"All his furniture in his house in Calcutta."

"All his goods on board a certain ship then lying in the River Hooghly."

"2,000 rupees which he has in the hands of C."

"The money due to him on the bond of D."

"His mortgage on the Rampore Factory."

"One-half of the money owing to him on his mortgage of Rampore Factory."

"1,000 rupees, being part of a debt due to him from C."

"His capital stock of 1,000*l.* in East India Stock."

"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

"All such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company."

"All the wine which he may have in his cellar at the time of his death."

"Such of his horses as B may select."

"All his shares in the Bank of Bengal."

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"All the shares in the Bank of Bengal which he may possess at the time of his death."

"All the money which he has in the 5½ per cent. loan of the Government of India."

"All the Government securities he shall be entitled to at the time of his decease."

Each of these legacies is specific.

(*b*) A having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B.

The legacy is specific.

(*c*) A having property at Benares, and also in other places, bequeaths to B all his property at Benares.

The legacy is specific.

(*d*) A bequeaths to B—

His house in Calcutta.

His zamindari of Rampore.

His taluk of Ramnagar.

His lease of the indigo factory of Sulkea.

An annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e*) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money to buy a house in Calcutta for B.

To buy an estate in Zillah Fureedpore for B.

To buy a diamond ring for B.

To buy a horse for B.

To be invested in shares in the Bank of Bengal for B.

To be invested in Government securities for B.

A bequeaths to B—

"A diamond ring."

"A horse."

"10,000 rupees worth of Government securit es."

"An annuity of 500 rupees."

"2,000 rupees, to be paid in cash."

"So much money as will produce 5,000 rupees 4 per cent. Government securities."

These bequests are not specific.

(*g*) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England.

No one of these legacies is specific.

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CXXX. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the will.

Bequest of a sum certain where the stocks, &c. in which it is invested are described.

Illustration.

A bequeaths to B.

"10,000 rupees of his funded property."

"10,000 rupees of his property now invested in shares of the East Indian Railway Company."

"10,000 rupees at present secured by mortgage of Rampore Factory."

No one of these legacies is specific.

CXXXI. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Bequest of stock where the testator had at the date of his will an equal or greater amount of stock of the same kind.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees.

The legacy is not specific.

CXXXII. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Bequest of money where it is not to be paid until some part of the testator's property shall have been disposed of in a certain way.

Illustration.

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realized in England.

The legacy is not specific.

CXXXIII. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

When enumerated articles are not to be deemed to be specifically bequeathed.

CXXXIV. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Retention, in form, of specific bequest to several persons in succession.

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Illustrations.

(*a*) A having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although if B lives for 15 years, C can take nothing under the bequest.

(*b*) A having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

CXXXV. Where property comprised in a bequest to two or more persons in succession, is not specifically bequeathed, it shall in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the high court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death, to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where there is a deficiency of assets to pay legacies, specific legacy not liable to abate with general legacies.

CXXXVI. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

Of Demonstrative Legacies.

Demonstrative legacy defined.

CXXXVII. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative.

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Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b*) A bequeaths to B "ten bushels of the corn which shall grow in his field of Greenacre."

"80 chests of the indigo which shall be made at his factory of Rampore."

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Ramnagar.

A bequeaths to B "10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy is directed to be paid out of a fund the subject of a specific legacy.

CXXXVIII. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

Of Ademption of Legacies.

Ademption explained.

CXXXIX. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

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Illustrations.

(*a*) A bequeaths to B—

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods which shall be in or about his dwelling-house in M Street in Calcutta, at the time of his death."

A, in his lifetime,

Sells or gives away the ring.

Converts the chain into a cup.

Converts the wool into cloth.

Makes the cloth into a garment.

Takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths to B—

"The sum of 1,000 rupees in a certain chest."

"All the horses in his stable."

At the death of A, no money is found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned.

The legacy is adeemed.

No ademption of demonstrative legacy.

CXL. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from a third party.

CXLI. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(*a*) A bequeaths to B—

"The debt which C owes him."

"2,000 rupees which he has in the hands of D."

"The money due to him on the bond of E."

"His mortgage on the Rampore Factory,"

all these debts are extinguished in A's lifetime, some with and some without his consent.

All the legacies are adeemed.

(*b* A bequeaths to B—

"His interest in certain policies of life assurance."

A in his lifetime receives the amount of the policies. The legacy is adeemed.

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CXLII. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

CXLIII. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of an entire fund of which a portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time his death belong to B under the specific bequest.

CXLIV. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Order of payment where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund to another, and the testator having received a portion of that fund, the remainder is insufficient to pay both legacies.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

CXLV. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

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Illustration.

A bequeaths to B—

"His capital stock of 1,000*l.* in East India Stock."

"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. loan."

A sells the stock and the notes.

The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

CXLVI. Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B—

"His 10,000 rupees in the 5½ per cent. loan of the Government of India.

A sells one-half of his 10,000 rupees in the loan in question.

One-half of the legacy is adeemed.

Non-ademption of specific bequest of goods described as connected with a certain place by reason of removal.

CXLVII. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

(*a*) A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

(*b*) A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

CXLVIII. The removal of the thing bequeathed from the place in which it is stated in the will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

(*a*) A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At

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the time of his death, these effects had been removed from his lodgings in Calcutta.

(*b*) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

(*c*) A bequeaths to B all his goods on board a certain ship then lying in the River Hooghly. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When the thing bequeathed is a valuable to be received by the testator from a third person; and the testator himself, or his representative, receives it.

CXLIX. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Change by operation of law of subject of specific bequest between date of will and testator's death.

CL. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India."

The securities for the 5½ per cent. loan are converted during A's lifetime into 5 per cent. stock.

A bequeaths to B the sum of 2,000*l.*, invested in consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

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Change of subject without testator's knowledge.

CLI. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his 3 per cent. consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to a third party on condition that it shall be replaced.

CLII. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed sold but replaced and belonging to the testator at his death.

CLIII. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

Of the Payment of Liabilities in respect of the Subject of a Bequest.

Non-liability of executor to exonerate specific legatees.

CLIV. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(*a*) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by

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A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b) A bequeaths to B a zamindari, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed, to be at cost of his estate.

CLV. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a) A having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase money must be made good out of A's assets.

(b) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immovable property for which land-revenue or rent is payable periodically.

CLVI. Where there is a bequest of any interest in immovable property, in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Exoneration of specific legatee's stock in a joint stock company.

CLVII. In the absence of any direction in the will where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but if any call or other payment shall, after the testator's death, become due in

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respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a joint stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of things described in general terms.

Bequest of thing described in general terms.

CLVIII. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a*) A bequeaths to B *a* pair of carriage horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(*b*) A bequeaths to B "*his* pair of carriage horses." A had no carriage horses at the time of his death. The legacy fails.

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PART XXIV.

Of Bequests of the Interest or Produce of a Fund.

Bequest of the interest or produce of a fund.

CLIX. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*) A bequeaths to B the interest of his 5 per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Government of India.

(*b*) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(*c*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

Of Bequests of Annuities.

Annuity created by will is payable for life only unless a contrary intention appears by the will.

CLX. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Period of vesting where will directs that an annuity be provided out of the

CLXI. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to

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proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity.

be invested in the purchase of an annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Illustrations.

(*a*) A by his will directs that his executors shall out of his property purchase an anuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representatives of C.

Abatement of annuity.

CLXII. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Where there is a gift of an annuity, and a residuary gift, the whole of the annuity to be first satisfied.

CLXIII. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.

Of Legacies to Creditors and Portioners.

Creditor *primâ facie* entitled to legacy as well as debt.

CLXIV. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Child *primâ facie* entitled to legacy as well as portion.

CLXV. Where a parent who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

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Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee.

CLXVI. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.

Of Election.

Circumstances in which election takes place.

CLXVII. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interet relinquished by the owner.

CLXVIII. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

CLXIX. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(*a*) The farm of Sultánpur was the property of C. A bequeaths it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remain-

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ing 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement belong to B if his elder brother (who is married, and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and subject thereto devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for a man's benefit how regarded for the purpose of election.

CLXX. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

A person deriving a benefit indirectly not put to his election.

CLXXI. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

A person taking under a will in his individual capacity, may in another character elect to take in opposition to it.

CLXXII. A person who in his individual capacity takes a benefit under the will, may in another character elect to take in opposition to the will.

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Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B and 1,000 rupees to C, who is B's only child. B dies intestate shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of a benefit given by a will constitutes an election to take under the will.

CLXXIII. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a*) A is owner of an estate called Sultánpur Khurd, and has a life interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue

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will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Presumption arising from enjoyment by legatee for two years.

CLXXIV. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

CLXXV. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

CLXXVI. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance with their request within a reasonable time.

Postponement of election in case of disability.

CLXXVII. In case of disability, the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in contemplation of Death.

Property transferable by gift made in contemplation of death.

CLXXVIII. A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will. A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by

When a gift is said to be made in contemplation of death.

Such gift resumable.

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the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made. When it fails.

Illustrations.

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

A watch.

A bond granted by C to A.

A bank note.

A promissory note of the Government of India endorsed in blank.

A Bill of Exchange endorsed in blank.

Certain mortgage deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

The watch.

The debt secured by C's bond.

The bank note.

The promissory note of the Government of India.

The Bill of Exchange.

The money secured by the mortgage deeds.

(*b*) A being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(*c*) A being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

Of Grant of Probate and Letters of Administration.

CLXXIX. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such. Character and property of executor or administrator as such.

CLXXX. When a will has been proved and deposited in a court of competent jurisdiction, situated beyond the Administration with copy annexed of au-

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thenticated copy of will proved abroad.

limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate to be granted to executor appointed by will.

CLXXXI. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

CLXXXII. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not; B is appointe executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

CLXXXIII. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

CLXXXIV. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

Separate probate of codicil discovered after grant of probate.

CLXXXV. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors are appointed by the codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

CLXXXVI. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

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CLXXXVII. No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one-hundred and eightieth section.

No right as executor or legatee can be established, unless probate or letters of administration shall have been granted by a competent court.

CLXXXVIII. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Probate establishes the will from testator's death.

CLXXXIX. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Persons to whom letters of administration may not be granted.

CXC. No right to any part of the property of a person who has died intestate can be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

No right to intestate's property can be established, unless administration previously granted by a competent court.

CXCI. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

From what period letters of administration entitle administrator to intestate's rights.

CXCII. Letters of administration do not render valid any intermediate acts of the administrator, tending to the diminution or damage of the intestate's estate.

Acts of administrator not validated by letters of administration.

CXCIII. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that when one or more of several executors have proved a will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Grant of administration where executor has not renounced.

Exception.

CXCIV. The renunciation may be made orally in the presence of the judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

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Procedure where executor renounces or fails to accept within the time limited.

CXCV. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

CXCVI. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or when the executor dies after having proved the will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

CXCVII. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration when there is no executor, nor residuary legatee, nor representative of such legatee.

CXCVIII. When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation to be issued before grant of administration to any legatee other than universal or residuary.

CXCIX. Letters of administration with the will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Order in which connections by marriage or consanguinity are entitled to administration.

CC. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

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CCI. If the deceased has left a widow, administration shall be granted to the widow unless the court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased. Administration to be granted to widow unless court see cause to exclude her.

Illustrations.

(*a*) The widow is a lunatic, or has committed adultery, or has been barred, by her marriage settlement, of all interest in her husband's estate; there is cause for excluding her from the administration.

(*b*) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

CCII. If the judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow. Persons associated with widow in administration.

CCIII. If there be no widow, or if the court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration. Grant of administration where no widow, or widow excluded. Proviso.

CCIV. Those who stand in equal degree of kindred to the deceased, are equally entitled to administration. Deceased's kindred of equal degree, equally entitled to administration.

CCV. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband. Right of widower to administration of wife's estate.

CCVI. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor. Grant of administration to a creditor.

CCVII. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India. Where deceased has left property in British India, administration must be granted according to the foregoing rules.

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PART XXX.

Of Limited Grants.

(a) Grants limited in Duration.

Probate of copy or draft of lost will.

CCVIII. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

CCIX. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

CCX. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until the will be produced.

CCXI. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b) Grants for the Use and Benefit of others having Right.

Administration, with the will annexed, to attorney of an absent executor.

CCXII. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with the will annexed, to attorney of an absent person, who, if pre-

CCXIII. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with

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the will annexed may be granted to his attorney, limited as above-mentioned. sent would be entitled to administer.

CCXIV. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned. Administration to attorney of absent person entitled to administer in case of intestacy.

CCXV. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the will shall be granted to him. Administration during minority.

CCXVI. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years. Administration until one of several minor executors or residuary legatees attains majority.

CCXVII. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the court may think fit to appoint for the use and benefit of the lunatic until he shall become of sound mind. Administration for use and benefit of lunatic *jus habens*.

CCXVIII. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its direction. Administration *pendente lite*.

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(c) *For Special Purposes.*

Probate limited to purpose specified in the will.

CCXIX. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, letters of administration, with the will annexed, shall accordingly be limited.

Administration with the will annexed limited to a particular purpose.

CCXX. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to property in which a person has a beneficial interest.

CCXXI. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to a suit.

CCXXII. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to the purpose of becoming a party to a suit to be brought against administrator.

CCXXIII. If at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the court that has granted the probate or letters of administration is situate, it shall be lawful for such court to grant to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit

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to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

CCXXIV. In any case in which it may appear necessary for preserving the property of a deceased person, the court within whose district any of the property is situated, may grant to any person whom such court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the court.

Appointment as administrator, of person other than the one who under ordinary circumstances would be entitled to administration.

CCXXV. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the judge shall think fit.

(d) *Grants with Exception.*

Probate or administration with the will annexed, subject to exception.

CCXXVI. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

CCXXVII. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) *Grants of the Rest.*

Probate or administration of the rest.

CCXXVIII. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may

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take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects unadministered.

Grant of effects unadministered.

CCXXIX. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

CCXXX. In granting letters of administration of an estate not fully administered, the court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when a limited grant has expired, and there is still some part of the estate unadministered.

CCXXXI. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g) Alteration in Grants.

What errors may be rectified by the court.

CCXXXII. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

CCXXXIII. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) Revocation of Grants.

Revocation or annulment for just cause, of grant of probate or administration.

CCXXXIV. The grant of probate or letters of administration may be revoked or annulled for just cause.

Just cause.

Explanation.—Just cause is—1st, that the proceedings to obtain the grant were defective in substance. 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case. 3rd, that the grant was obtained by means of an

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untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently. 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*) The court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were granted, has subsequently become of unsound mind.

PART XXXI.

Of the Practice in granting and revoking Probates and Letters of Administration.

Jurisdiction of District Judge in granting and revoking probates and letters of administration.

CCXXXV. The district judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

District Judge's powers as to the granting of probate and administration.

CCXXXVI. The district judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his court.

District Judge may order any person to produce testamentary papers.

CCXXXVII. The district judge may order any person to produce and bring into court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined respecting the same,

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and such person shall be bound to answer such questions as may be put to him by the court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the India Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the judge.

Proceedings of District Judge's Court in relation to probate and administration.

CCXXXVIII. The proceedings of the court of the district judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When and how District Judge is to interfere for the protection of property.

CCXXXIX. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the district judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

Probate or administration may be granted by District Judge, when testator or intestate at his death had a fixed dwelling or any property within the jurisdiction.

CCXL. Probate of the will or letters of administration to the estate of a deceased person may be granted by the district judge under the seal of his court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the judge.

When application is made to the judge of a district in which the deceased had no fixed abode.

CCXLI. When the application is made to the judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district; where the application is for letters of administration,

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them absolutely or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

CCXLII. Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration, if property made and verified.

CCXLIII. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.

Petition for probate.

CCXLIV. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the court in which the application is made, with the will annexed, and stating the time of the testator's death, that the writing annexed is his last will and testament, that it was duly executed, and that the petitioner is the executor therein named; and in addition to these particulars, when the application is to the district judge, the petition shall further state that the deceased at the time of his death, had his fixed place of abode, or had some property, movable or immovable, situate within the jurisdiction of the judge.

In what cases translation of will to be annexed to the petition.

CCXLV. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the court, there shall be a translation thereof annexed to the petition by a translator of the court, if the language be one for which a translator is appointed; but if the will be in any other language, then by any person competent to translate the same, in which case such transla-

Verification of trans-

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lation made by any person other than the court translator.

tion shall be verified by that person in the following manner: —"I (*A B*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

CCXLVI. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the district judge to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands.

Petition for probate or letters of administration to be signed and verified.

CCXLVII. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A B*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one of the witnesses to the will.

CCXLVIII. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C D*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for making false averment in petition or declaration.

CCXLIX. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

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CCL. In all cases it shall be lawful for the district judge, if he shall think proper, to examine the petitioner in person, upon oath or solemn affirmation, and also to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the collector of the district, and otherwise published or made known in such manner as the judge issuing the same may direct.

District Judge may examine petitioner in person and require further evidence, and issue citations to inspect the proceedings

Publication of citation.

CCLI. Caveats against the grant of probate or administration may be lodged with the district judge; and immediately on a caveat being entered with the district judge, a copy thereof shall be given to any other judge to whom it may appear to the district judge expedient to transmit the same.

Caveat against grant of probate or administration.

CCLII. The caveat shall be to the following effect:— "Let nothing be done in the matter of the estate of A. B, late of deceased, who died on the day of at without notice to C D of "

Form of caveat.

CCLIII. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the court shall think reasonable.

After entry of caveat, no proceeding to be taken on the petition until after notice to the caveator.

CCLIV. When it shall appear to the judge that probate of a will should be granted, he will grant the same under the seal of his court in manner following:—

Grant of probate to be under seal of the court.

I, , Judge of the district of hereby make known that on the day of in the year the last Will of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits

Form of such grant.

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of the said deceased, and in any way concerning his will, was granted to the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof."

Grant of letters of administration to be under seal of court.

CCLV. And wherever it shall appear to the district judge that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his court in manner following:—

Form of such grant.

"I, , Judge of the District of , hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration-bond

CCLVI. Every person to whom any grant of administration shall be committed shall give a bond to the judge of the district court to enure for the benefit of the judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

CCLVII. The court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into court, or otherwise as the court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the judge of the court, and shall be entitled

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to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach thereof.

Probate not to be granted until after seven days, and letters of administration until after fourteen days from the testator's or intestate's death.

CCLVIII. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original wills of which probate or letters of administration with will annexed have been granted.

CCLIX. Every district judge shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his court, until some public registry for wills is established; and the local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or letters of administration shall alone have power to sue, &c., until the same shall have been revoked.

CCLX. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

CCLXI. In any case before the district judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or letters of administration revoked.

CCLXII. Where any probate or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate

Right of such executor or administrator to recoup himself for payments.

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or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders made by district judge under powers conferred by this Act.

CCLXIII. Every order made by a district judge by virtue of the powers hereby conferred upon him, shall be subject to appeal to the high court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of high court.

CCLXIV. The high court shall have concurrent jurisdiction with the district judge in the exercise of all the powers hereby conferred upon the district judge.

PART XXXII.

Of Executors of their own Wrong.

Executor of his own wrong.

CCLXV. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions.—First. Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(a) A uses or gives away or sells some of the goods of the deceased or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b) A having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong, in respect of acts done after he has become aware of the death of the deceased.

(c) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of an executor of his own wrong.

CCLXVI. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of

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the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving the deceased, and rents due at the time of his death.

CCLXVII. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action in favour of or against deceased, survive to and against his executor or administrator.

CCLXVIII. All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations

(a) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of deceased's property.

CCLXIX. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(a) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(b) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.

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Purchase by executor or administrator of deceased's property.

CCLXX. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators, exercisable by one.

CCLXXI. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, movable or immovable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

CCLXXII. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effects unadministered.

CCLXXIII. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

CCLXXIV. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

CCLXXV. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

Of the Duties of an Executor or Administrator.

As to deceased's funeral.

CCLXXVI. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

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Inventory and account.

CCLXXVII. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the court by which the same may have been granted, an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

Duty of executor or administrator as to property of, and debts owing to the deceased.

CCLXXVIII. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

CCLXXIX. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

CCLXXX. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then the other debts.

CCLXXXI. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Save as aforesaid, all debts to be paid equally and rateably.

CCLXXXII. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Application of movable property to payment of debts, where the deceased's domicil was not in British India.

CCLXXXIII. If the domicile of the deceased was not in British India, the application of his movable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

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Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 10,000 rupees, immovable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the movable estate, and the proceeds of the immovable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal is to be paid out of the proceeds of the immovable estate.

Creditor paid in part under Section 283 to bring such payment into account before sharing in proceeds of immovable property.

CCLXXXIV. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 5,000 rupees, and immovable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

CCLXXXV. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

CCLXXXVI. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

CCLXXXVII. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to re-

Executor not to pay legatee in preference to another.

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tain any money on account of a legacy to himself or to any person for whom he is a trustee.

CCLXXXVIII. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

CCLXXXIX. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when the assets are sufficient to pay debts and necessary expenses.

CCXC. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring valued at 500 rupees, and to C a horse valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

CCXCI. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.

Of the Executor's Assent to a Legacy.

CCXCII. The assent of the executor is necessary to complete a legatee's title to his legacy.

Executor's assent necessary to complete legatee's title.

Illustrations.

(a) A by his will bequeaths to B his government paper, which is in deposit with the Bank of Bengal. The bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

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(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

CCXCIII. The assent of the executor to a specific bequest shall be sufficient to devest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Assent may be verbal, and either express or implied.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

CCXCIV. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

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CCXCV. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Assent of executor to his own legacy.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

CCXCVI. The assent of the executor to a legacy gives effect to it from the death of the testator.

Assent of executor gives effect to legacy from testator's death.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

CCXCVII. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor not bound to pay or deliver legacies until after one year from testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

Of the Payment and Apportionment of Annuities.

CCXCVIII. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

CCXCIX. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the

When payment of annuity to be paid quarterly or monthly first falls due.

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case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment of an annuity directed to be made within a given time, or on a day certain.

CCC. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the firts payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where a legacy, not specific, is given for life.

CCCI. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the high court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of amount of general legacy, to be paid at a future time.

Intermediate interest.

CCCII. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section. The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund is charged with or appropriated to an annuity.

CCCIII. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the high court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee of amount of contingent bequest.

CCCIV. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary

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legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed to a person for life, without direction to invest in particular securities.

CCCV. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the high court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residue bequeathed to a person for life, with direction to invest in specified securities.

CCCVI. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of the conversion and investment.

CCCVII. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor is entitled to immediate payment or possession of bequest, and there is no direction to pay to any person on his behalf.

CCCVIII. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the court of the district judge, by whom the probate was, or letters of administration with the will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that court to his account, and such payment into the court of the district judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid; and such money when paid in shall be invested in

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the purchase of government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

Of the Produce and Interest of Legacies.

Legatee of a specific legacy entitled to produce thereof from testator's death.

CCCIX. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee entitled to produce of residuary fund from testator's death.

CCCX. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testators' death belongs to A.

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(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since testator's death goes as undisposed of.

Interest when no time is fixed for payment of a general legacy.

CCCXI. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time has been fixed.

CCCXII. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

CCCXIII. The rate of interest shall be four per cent. per annum.

No interest payable on arrears of annuity within first year after testator's death.

CCCXIV. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest payable on sum to be invested to produce annuity.

CCCXV. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

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PART XXXIX.

Of the Refunding of Legacies.

Refund of legacy paid under judge's orders.

CCCXVI. When an executor has paid a legacy under the order of a judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if legacy paid voluntarily.

CCCXVII. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy has become due on performance of a condition within further time allowed under Section 124.

CCCXVIII. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twenty-fourth section for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee is compellable to refund in proportion.

CCCXIX. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets

CCCXX. Where an executor or administrator has given such notice as would have been given by the high court in an administration suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

Within what period a

CCCXXI. A creditor who has not received payment of

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his debt may, within two years after the death of the testator, or one year after the legacy has been paid, call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

creditor may call upon a legatee to refund.

CCCXXII. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him, with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When a legatee who has not received payment or who has been compelled to refund under Section 321, cannot oblige one who has received payment in full to refund.

CCCXXIII. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When an unsatisfied legatee must first proceed against executor, if solvent.

CCCXXIV. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to the refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

CCCXXV. The refunding shall in all cases be without interest.

Refunding to be without interest.

CCCXXVI. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue of the deceased's property after usual payments to be paid to residuary legatee.

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PART XL.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation.

CCCXXVII. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of the deceased's property.

CCCXXVIII. When an executor or administrator occasions a loss to the estate by neglecting to get any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

Miscellaneous.

CCCXXIX. Repealed by Act VII. of 1870.

CCCXXX. Repealed by Act XXIV. of 1867.

Succession to property of Hindus, Muhammadans or Buddhists and certain wills, intestacies and mar-

CCCXXXI. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindoo, Muhammadan or Buddhist; nor shall they apply to any will made, or any intestacy occurring before the first

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day of January 1866. The fourth section shall not apply to any marriage contracted before the same day. riages not affected by this Act.

COCXXXII. The Governor-General of India in Council shall from time to time have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act, the members of any race, sect or tribe in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order. The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect. All orders and revocations made under this section shall be published in the *Gazette of India*. Power of Governor-General to exempt any race, sect, or tribe in British India from the operation of this Act.

SCHEDULE. Repealed by Act VII of 1870.

A. D. 1865. ACT XI.

AN ACT *to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature.*

Passed on the 15*th March* 1865.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature; it is enacted as follows:— Preamble.

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

Words importing the singular number include the plural, and words importing the plural number include the singular. Number.

Words importing the masculine gender include females. Gender.

"Judge" includes an acting judge. Judge.

"Section" means a section of this Act. Section.

"Court of Small Causes" means a court constituted under this Act. Court of Small Causes.

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Local Government. And, in every part of British India in which this Act operates, "Local Government" denotes the person authorized to administer the executive government in such part, and "High Court" denotes the highest civil court of appeal having jurisdiction therein.

High Court.

II.* Provided that any Courts of Small Causes now in existence which shall have been constituted under Act No. XLII. of 1860, shall be considered as constituted under this Act within the territorial limits of the jurisdiction assigned to such courts under the said Act XLII. of 1860, or which may hereafter be assigned to them under the next following section, and shall be subject to all the provisions contained herein.

Constitution of Small Cause Courts. III. The local Government may, with the previous sanction of the Governor-General of India in Council, constitute for the trial of suits under this Act, Courts of Small Causes, with such establishment of officers as may be necessary, at any places within the territories under such government. Whenever a Court of Small Causes shall be so constituted, the local Government shall fix the territorial limits of the jurisdiction of such court, and may from time to time alter the limits so fixed. The local Government may abolish any Court of Small Causes.

Limits of their territorial jurisdiction to be fixed by local Government.

Seal of the court. IV. Every Court of Small Causes shall use a seal bearing the following inscription in English and in the language of the court—"Court of Small Causes of ",—and shall be subject to the general control and orders of the high court.

Courts to be generally subject to the High Court.

Places where courts to be held. V. Courts of Small Causes shall be held at such place or places within the local limits of their respective jurisdictions, as shall from time to time be appointed by the local Government.

Suits cognizable by Small Cause Courts. VI. The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or

* See Act XIV. of 1870.

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value the sum of five hundred rupees whether on balance of account or otherwise; provided that no action shall lie in any such court— Proviso.

(1) On a balance of partnership account, unless the balance shall have been struck by the parties or their agents:

(2) For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will:

(3) For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury:

(4) For any claim for the rent of land or other claim for which a suit may now be brought before a revenue officer, unless, as regards arrears of rent for which such suit may be brought, the judge of the Court of Small Causes shall have been expressly invested by the local Government with jurisdiction over claims to such arrears.

VII. The local Government may extend the jurisdiction of any Court of Small Causes, in suits of the nature described in the last preceding section and thereby made cognizable by Courts of Small Causes, to an amount not exceeding one thousand rupees. Power to extend jurisdiction of Small Cause Courts to rupees one thousand.

VIII. Courts of Small Causes may try all such suits as are described in the sixth section and thereby made cognizable by Courts of Small Causes, if the defendant at the time of the commencement of the suit shall dwell, or personally work for gain or carry on business within the local limits of the jurisdiction of such court; or if the cause of action arose within the said local limits, and the defendant, at the time of the commencement of the suit, shall by his servant or agent carry on business or work for gain within those limits. Jurisdiction of the courts.

Explanations.—(*a*) Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to dwell at both places in respect of any cause of action arising at the place where he has such temporary lodging.

(*b*) A corporation or company shall be deemed to carry on business at its sole or principal office, or at any place

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where it has also a subordinate office in respect of any cause of action arising at such place.

(c) The 'business' contemplated in this section must be carried on at some fixed place for at least a certain time.

Suits against Government.

IX. Suits against the local Government or against the Government of India shall be brought in the court having jurisdiction at the place which is the seat of such Government.

Suits against the Secretary of State.

X. Suits against the Secretary of State shall be brought in the court having jurisdiction at the place which is the seat of the local Government for the territories in which the cause of action arose.

Substituted service of summons.

XI. Service of a summons issued under this Act, on any servant or agent by whom the defendant may carry on business or work for gain, shall be deemed to be good service upon the defendant, provided that such agent or servant himself, at the time of such service, personally carries on the business or work for gain for the defendant, within the local limits of the jurisdiction of the court in which the suit is brought.

Suits cognizable by a Court of Small Causes not to be heard by any other court having jurisdiction within the local limits.

Saving of jurisdiction of magistrates as to debts.

Of village moonsiffs and village or district panchayets in Madras.

Of military courts of requests.

XII. Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such court shall be heard or determined in any other court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes: provided that nothing in this Act shall be held to take away the jurisdiction which a magistrate, or a person exercising the powers of a magistrate, or an assistant or deputy magistrate, can now exercise in regard to debts or other claims of a civil nature; or the jurisdiction which can be exercised by village moonsiffs, or village or district panchayets under the provisions of the Madras Code; or by military courts of requests, or by cantonment joint magistrates invested with civil jurisdiction under Act III. of 1859 (*for conferring Civil jurisdiction in certain cases upon Cantonment Joint Magistrates and for constituting those Officers Registers of Deeds*); or by a single officer duly authorized and appointed under the rules in force in the presidencies of Madras and Bombay respectively, for the trial of small

Of officers appointed to try small suits in Madras and Bombay.

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suits in military bazaars in cantonments and stations occupied by the troops of those presidencies respectively; or by panchayets in regard to suits against military persons, according to the rules in force in the presidency of Madras.

Or of military panchayets in Madras.

XIII. Every Court of Small Causes shall (except as hereinafter provided) be held before a judge appointed by the local Government, and who shall receive such salary as the Governor-General of India in Council may from time to time determine. Such judge shall be the judge either of one such court or of two or more such courts as the local Government shall appoint, but except as hereinafter provided, he shall not exercise any civil jurisdiction except under the provisions of this Act.

Judge of court.

XIV. It shall be lawful for any judge who is the judge of two or more Courts of Small Causes to fix, subject to the orders of the local Government, or, in territories under the immediate administration of the Government of India, of the chief commissioner or other principal civil authority, the times at which he will go on circuit, and the dates on which his sittings in the several courts of which he is judge shall commence. Notice of such times and dates shall be published in the official gazette, and at such places and in such manner as the local Government or chief commissioner or other authority as aforesaid shall think fit to direct in that behalf.

Power to judge of several courts to fix times and dates of circuits and sittings.

XV. The local Government may from time to time invest any person with the powers of a judge of a Court of Small Causes under this Act for a limited period, or for specific periods in each year only, and declare in what court or Courts of Small Causes such powers shall be exercised by such person. Any person so invested shall, in all courts in which the local Government shall have declared that he shall exercise the said powers, have all such powers as might in such courts be exercised by a judge of the said courts appointed under the thirteenth section.

Local Government may invest any person, for a limited period, with powers of judge of Court of Small Causes.

Powers to be exercised by persons so invested.

XVI. If it shall be declared by the local Government that any person invested under the last preceding section with the powers of a judge of a Court of Small Causes, shall exercise those powers in a court of which there is a judge

Jurisdiction to be exercised by persons so invested in court in which there is a judge.

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appointed under the thirteenth section, the persons so invested shall exercise a jurisdiction concurrent with that of such judge. The local Government shall from time to time make rules to provide for the distribution of business between any person so invested and any judge in whose court it may be declared that such person shall exercise his powers, and generally for regulating and defining the duties and relative positions of judges of Courts of Small Causes and persons so invested as aforesaid: provided always that no such rule shall be in any way inconsistent with the provisions of this Act.

Remuneration of judges and of persons invested with powers of Small Cause Court judge, and restriction from practising within the limits.

XVII. Every person invested with the powers of a judge of a Court of Small Causes under the fifteenth section, shall receive such remuneration as the Governor-General in Council shall from time to time determine. It shall not be lawful for any such person to practise as a barrister, attorney, vakeel, pleader, or law agent in any district or place within the territorial limits of which he is empowered to exercise the powers with which he is invested.

Summons.

XVIII. In all suits under this Act, the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the court.

In suits cognizable by Small Cause Courts, court may on the judgment-creditor's application, direct immediate execution against the judgment-debtor's person or movable property.

XIX. When a decree is passed in any suit of the nature and amount cognizable under this Act, the court passing the decree may, at the same time that it passes the decree, on the verbal application of the party in whose favour the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the court passing the decree, or against the movable property of the judgment-debtor within the same limits. If the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

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XX. In the execution of a decree under this Act, if, after the sale of the movable property of a judgment-debtor, any portion of a judgment-debt shall remain due, and the holder of the judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the court, on the application of the holder of such judgment, shall grant him a copy of the judgment and a certificate of any sum remaining due under it; and on the presentation of such copy and certificate to any court of civil judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases.

Execution against immovable property, if movable property not sufficient.

XXI. In suits tried under this Act, all decisions and orders of the court shall be final: provided that in any case in which a decree shall be passed *ex parte* against a defendant, he may, within thirty days after any process for enforcing the decree has been executed, give notice to the court by which the decree was passed, of his intention to apply to the court at its next sitting for an order to set it aside: and if, on the application being made to the court at its next sitting, it shall be proved to the satisfaction of the court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was heard, the court shall pass an order setting aside the decree, and shall appoint a day for proceeding with the suit, upon such terms as to costs or otherwise as shall to the court seem proper: provided also that it shall be competent to the court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the court be given to the court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the court; but no such new trial shall be granted where the party applying for the same is the defendant or one of the defendants, unless he shall, with his notice of application, deposit in court the amount for which a decree shall have been passed against him, including the cost (if any) of the opposite party.

Decision in suits tried under this Act to be final.

Exparte decree may be set aside.

New trial.

On deposit of debt and costs.

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Power to refer questions of law, &c., to high court.

XXII. If in the trial of any suit under this Act any question of law or usage having the force of law, or any question as to the construction of a document which construction may affect the merits of the decision, shall arise, the court in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred rupees, shall draw up a statement of the case and refer it, with the court's own opinion, for the decision of the high court.

Powers to pass decree contingent upon the opinion of the High Court.

XXIII. The court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the high court on the point referred; but no execution shall be issued in any case in which a reference shall have been made, until the receipt of the order of the high court.

High Court to fix day for the hearing.

XXIV. The high court shall fix an early day for the hearing of the case, and shall cause notice of such day to be placed in the court-house.

Parties may appear and be heard in person or by pleader.

XXV. The parties to the case may appear and be heard in the high court in person or by pleader.

Decision of High Court to be transmitted.

XXVI. The high court, when it has heard and considered the case, shall send a copy of its judgment, under the seal of the court, to the court by which the reference was made; and such court shall, on the receipt of the copy, proceed to dispose of the case conformably to the decision of the high court.

Costs of reference to High Court.

XXVII. Costs, if any, consequent on the reference of a case for the opinion of the high court, shall be costs in the suit.

Power to High Court to alter or set aside order or decree made in the matter.

XXVIII. When a case is referred to the high court under the twenty-second section, the high court may alter, cancel or set aside any order or decree which the court trying the case may have made in the suit out of which the reference arose, and may make such order as the justice of the case may require.

Power to appoint one of the courts of a

XXIX. Whenever more courts than one are constituted in any district under this Act, the local Government may

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appoint one of the same courts to be the principal Court of Small Causes in such district.

district to be the principal court.

XXX. The judge of the principal Court of Small Causes in any district may sit with the judge of any other Court of Small Causes in the same district, or with a person invested with the powers of a judge as aforesaid in such court, for the trial and determination of any suit cognizable under this Act, and shall so sit for the trial and determination of any such suit which the judge of such other court or other person as aforesaid may reserve for trial by himself and the judge of the principal Court of Small Causes.

Judge of principal court may sit with judge of any other court in the district for the trial of reserved suits.

XXXI. The local Government may from time to time make rules providing that in such cases as shall be prescribed in such rules, two judges or a judge and a person invested with the powers of a judge as aforesaid, shall sit together and hear and dispose of suits and applications.

Local Government may make rules providing that two judges shall sit together for trial of certain suits.

XXXII. If two judges, or a judge and a person invested with the powers of a judge as aforesaid, sit together, and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the court: but if they shall differ on a point of law or usage having the force of law, or in construing a document the construction of which may affect the merits of the decision, they shall submit a case for the opinion of the high court on the point of difference between them, in the manner prescribed in the twenty-second section of this Act; and the provisions applicable to a reference to the high court, contained in the twenty-second, twenty-third, twenty-fourth, twenty-fifth and twenty-sixth sections of this Act, shall be applicable to every reference made under this section.

Procedure when two judges differ on a point of law.

XXXIII. If two judges differ on any matter other than the matters abovementioned, the judge who is senior in respect of date of appointment as a judge of a Court of Small Causes shall have the casting voice.

Casting voice in case of difference between two judges on a question of fact.

XXXIV. If a judge and a person invested with the powers of a judge as aforesaid differ on any matter other than the matters abovementioned, the judge shall have the casting voice.

Casting voice in case of difference on a question of fact between a judge and a person invested with a judge's powers.

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Appointment of registrar.

XXXV. It shall be lawful for the local Government to appoint to any Court of Small Causes an officer who shall be called the registrar of the court, and who shall be paid such salary as shall from time to time be authorized in that behalf by the Governor-General of India in Council.

Duties of registrar.

XXXVI. The registrar of every Court of Small Causes shall be the chief ministerial officer of the court. In addition to any other duties and powers herein imposed or conferred upon the registrar, he shall, subject to the provision contained in the next following section, receive all plaints presented to the court; issue notice of suit to the defendants; receive any documents which the parties may wish to put in; and issue process for the attendance of their witnesses. He shall likewise keep lists of all causes coming on for trial, and fix such days for their being heard respectively, as may seem to him fit. He may also receive notices under the twenty-first section.

Procedure where registrar thinks plaint defective in certain particulars.

XXXVII. If, when the judge is absent on duty and there is no person invested with the powers of a judge as aforesaid, the registrar shall be of opinion that any plaint presented to the court is defective in any of the particulars mentioned in sections twenty-seven to thirty-two, both inclusive, of the Code of Civil Procedure, he may reject the same. But it shall be lawful for the judge or for any person invested with the powers of a judge as aforesaid, to reject any plaint which may have been received by the registrar, and to receive any plaint which may have been rejected by him: provided that such reception or rejection as the case may be, by the registrar, shall, in the opinion of such judge or other person empowered as aforesaid, have been erroneous, and that an application to set the same aside shall be made at the first subsequent sitting in the said court of a judge or other person duly empowered as aforesaid.

Proviso.

Registrar may receive and enter up judgments by confession.

XXXVIII. If a suit shall have been instituted in a Court of Small Causes, and the defendant shall have been duly summoned to appear and answer therein, and if before the day appointed for the hearing of such suit, the defendant or his agent duly authorized in that behalf shall appear before

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the registrar of the court, and admit the plaintiff's claim and apply for leave to confess judgment, it shall be lawful for the registrar, if the judge be absent on duty and there be no person invested with the powers of a judge as aforesaid, to enter on the record a decree for the plaintiff by confession, and such decree shall have the like force and effect as a decree for the plaintiff would have had if the suit had been heard by the judge and a decree passed by him for the plaintiff: provided that in every case, before passing a decree under this section, it shall be the duty of the registrar fully to satisfy himself of the service of the summons, of the identity of the parties, and of their good faith in appearing before him. Proviso.

Execution of decrees by registrar.

XXXIX. The registrar, if the judge be absent on duty and there be no person invested with the powers of a judge as aforesaid, shall also receive applications for the execution of decrees passed by the judge or other person empowered as aforesaid, of the court of which he is the registrar, and, subject to any orders which he may receive from the judge or such other person, shall execute such decrees in the same manner as the judge might execute them. No appeal shall lie from any order passed by the registrar under this section, but the judge or other person empowered as aforesaid may, within three calendar months from the making of the order, of his own motion reverse or modify it.

Power to invest registrar with jurisdiction of Small Cause Court judge in certain cases.

XL. The local Government may invest any registrar with the powers of a judge of a Court of Small Causes in suits arising within the local limits of the jurisdiction of the court of which he is the registrar, provided that the amount or value of the claim shall not exceed twenty rupees. The registrar shall exercise such powers subject to the general control of the judge, or, when there is no judge, of any person invested with the powers of a judge as aforesaid.

Hearing of suits cognizable by registrar.

XLI. The suits cognizable by the registrar under the last preceding section shall be set down for hearing before such registrar, and he shall hear and determine such suits and execute the decrees made therein, in such manner in all respects as the judge of the court might hear, determine and execute the same respectively; provided that the judge, or

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Transfer from registrar's to judge's file.

when there is no judge, the person invested with the powers of a judge, whenever he thinks proper, may transfer to his own file any suit on the file of the registrar, and may hear and determine the same.

No appeal from decision of registrar under last section; but in cases of doubt, he may submit statement for opinion of judge.

XLII. No appeal shall lie from any order or decision made or passed by the registrar, in any case heard or disposed of by him; but in any case in which the registrar shall entertain any doubt upon any question of law or usage having the force of law, or as to the construction of a document which construction may affect the merits of the decision, he shall be at liberty to state a case for the opinion of the judge, or, when there is no judge, of the person invested with the powers of a judge as aforesaid, in like manner as the judge may, under the twenty-second section of this Act, state a case for the opinion of the high court; and all the provisions herein contained, relative to the stating of a case by the judge, shall apply, *mutatis mutandis*, to the stating of a case by the registrar.

Provisions applicable to such reference.

Setting aside decree by a registrar under Section 38.

XLIII. A decree passed by a registrar under the thirty-eighth section may be set aside by the judge of the court, or when there is no judge, by the person invested with the powers of a judge as aforesaid, in such manner and on such grounds only as it might be set aside if it were a decree passed at the hearing of the cause by the judge or other person empowered as aforesaid.

Appointment and removal of clerk of the court.

XLIV. An officer to be styled the clerk of the court may be appointed to any Court of Small Causes on such salary as shall be authorized by the Governor-General of India in Council. The appointment and removal of such officer shall rest with the court, subject to the approval of the local Government, or, in territories under the immediate administration of the Government of India, of the chief commissioner or other principal civil authority. The registrar of any Court of Small Causes may also be the clerk of the court.

Duties of clerk.

XLV. When a clerk is appointed to any Court of Small Causes, such clerk shall, subject to the orders of the court and of the registrar if there be a registrar, issue all summonses, warrants, orders, and writs of execution, and keep an account of all proceedings of the court, and shall take

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charge of and keep an account of all monies payable or paid into or out of court, and shall enter an account of all such monies in a book belonging to the court to be kept by such clerk for that purpose.

High Court empowered to make rules of practice, &c.

XLVI. The high court shall have power to make and issue general rules for regulating the practice and proceedings of Courts of Small Causes, and also to prescribe forms for every proceeding in the said courts for which it shall think that forms should be provided, and for keeping all books, entries and accounts to be kept by the officers, and from time to time to alter any such rule or form; provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law for the time being in force.

Act VIII of 1859 made applicable to cases cognizable under this Act.

XLVII.* Except as hereinbefore provided, the provisions of the Code of Civil Procedure shall, so far as the same are or may be applicable, extend to all suits and proceedings under this Act.

Saving of Act XI of 1841, Section 17.

XLVIII. Nothing in the second section of the said Act No. III. of 1859, or the sixth, seventh and eighth sections of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*), relating to the establishment of Courts of Small Clauses in military cantonments, shall be held to affect so much of Act No. XI. of 1841 (*for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the service of the East India Company*) as declares that in places beyond the frontier of the territories of the East India Company, actions of debt and other personal actions may be brought before the military courts therein mentioned, against persons so amenable as therein mentioned, for any amount of demand.

Saving of jurisdiction of courts of requests.

XLIX. Nothing in this Act, nor in the sixth, seventh and eighth sections of the said Act XXII of 1864, shall be held to affect the jurisdiction of any court of requests constituted under the hundred and third section of the Statute 21 Vic., cap. 3, or the corresponding section in any other

* See Act VII of 1870.

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statute for the time being in force, for punishing mutiny and desertion, and for the better payment of the Army and their quarters, or the powers of a commanding officer under any such statute to assemble such courts.

Reference in previous Acts to Act XLII of 1860 to be read as appling to this Act.

L. When in any Act passed prior to the coming into operation of this Act, reference is made to Act XLII. of 1860, such reference shall be read as applying to this Act, and when any procedure is directed to be in accordance with the provisions of Act XLII. of 1860, such procedure shall be deemed to be directed to be in accordance with the provisions of this Act.

Power to give a Small CauseCourt judge the powers of a principal sudder ameen or a magistrate.

LI. Whenever the state of business in any Court of Small Causes, the judge of which shall be the judge of such court only, is not sufficient to occupy his time fully, the local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such judge, with the powers of a magistrate as defined in the Code of Criminal Procedure, or, in the Regulation Provinces, with the powers of a principal sudder ameen, or, in the Non-Regulation Provinces, with the powers of an officer exercising the like or nearly the like powers as those of a principal sudder ameen.

Power to give Small Cause Court judge jurisdiction to hear claims under Act X of 1859.

LII. In the places in which the provisions of Act X of 1859 (*to amend the Law relating to the recovery of Rent in the Presidency of Fort William in Bengal*) are in force, the local Government may empower any judge of a Court of Small Causes to hear and determine, under the rules contained in the said Act X. of 1859 applicable to trials before a collector, and subject to the same regular and special appeal, the claims cognizable under such Act arising within the local limits of the jurisdiction of such court. Any judge so empowered shall exercise all the powers of a collector under the said Act X. of 1859 except the power of hearing appeals.

Small CauseCourts to furnish records, &c., called for by local Government or high court.

LIII. Courts of Small Causes shall comply with such requisitions as may from time to time be made by the local Government or the high court for records, returns, and statements in such form and manner as such Government or court may deem proper.

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A. D. 1865. ACT XV.

AN ACT *to define and amend the law relating to Marriage and Divorce among the Parsees.*

Passed on the 7th April 1865.

WHEREAS the Parsee community has represented the necessity of defining and amending the law relating to marriage and divorce among Parsees; and whereas it is expedient that such law should be made conformable to the customs of the said community; it is enacted as follows:— Preamble.

I.—PRELIMINARY

I. This Act may be cited as "The Parsee Marriage and Divorce Act, 1865." Short title.

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

Words in the singular number include the plural, and words in the plural number include the singular. Number.

"Priest" means a Parsee priest, and includes Dastur and Mobed. Priest.

"Marriage" means a marriage between Parsees whether contracted before or after the commencement of this Act; and "husband" and "wife" respectively mean a Parsee husband and a Parsee wife. Marriage. Husband and Wife.

"Section" means a section of this Act. Section.

"Chief Justice" includes senior judge. Chief Justice.

"Court" means a court constituted under this Act. Court.

"British India" means the territories which are or shall be vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better Government of India." British India.

And, in any part of British India in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized Local Government.

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High Court.

to exercise the powers vested by this Act in a local Government; and "High Court" means the highest civil court of appeal in such part.

II.—Of Marriages between Parsees.

Requisites to validity of Parsee marriages.

III. No marriage contracted after the commencement of this Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsees and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the *Gazette of India*, and unless such marriage shall be solemnized according to the Parsee form of ceremony called "Asirvad," by a Parsee priest in the presence of two Parsee witnesses independently of such officiating priest; and unless, in the case of any Parsee who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

Remarriage save after divorce unlawful during lifetime of first wife or husband.

IV. No Parsee shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband, by sentence of a court as hereinafter provided; and every marriage contracted contrary to the provisions of this section shall be void.

Punishment of bigamy.

V. Every Parsee who shall, after the commencement of this Act, and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriages.

VI. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act. The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate,

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together with a fee of two rupees to be paid by the husband to the registrar of the place at which such marriage is solemnized. The registrar on receipt of the certificate and fee, shall enter the the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

Appointment of registrar.

VII. For the purposes of this Act, a registrar shall be appointed.* Within the local limits of the ordinary original civil jurisdiction of a high court, the registrar shall be appointed by the chief justice of such court, and, without such limits, by the local Government. Every registrar so appointed may be removed by the chief justice or local Government appointing him.

Marriage register to be open for public inspection.

VIII. The register of marriages mentioned in the sixth section shall, at all reasonable times, be open for inspection; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

Penalty for solemnizing marriage contrary to Section 4.

IX. Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of the fourth section shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for priest's neglect of requirements of Section 6.

X. Any priest neglecting to comply with any of the requisitions affecting him contained in the sixth section shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for omitting to subscribe and attest the certificate.

XI. Every other person required by the sixth section to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for making, &c. false certificate.

XII. Every person making or signing or attesting any such certificate containing a statement which is false, and

* See Act XIV. of 1870.

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which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in section four hundred and sixty-six of the said code.

Penalty for failing to register certificate.

XIII. Any registrar failing to enter the said certificate pursuant to the sixth section, shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Penalty for secreting, destroying or altering the register.

XIV. Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

III.—Of Parsee Matrimonial Courts.

Constitution of special courts under this Act.

XV. For the purposes of hearing suits under this Act, a special court shall be constituted in each of the presidency towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several local Governments as such governments respectively shall think fit.

Parsee Chief Matrimonial Courts.

XVI. The court so constituted in each of the presidency towns shall be entitled the Parsee Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be. The local limits of the jurisdiction of a Parsee Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the high court. The chief justice of the high court, or such other judge of the same court as the chief justice shall from time to time appoint, shall be the judge of such matrimonial court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

Parsee District Matrimonial Courts.

XVII. Every court so constituted at a place other than a presidency town shall be entitled the Parsee District Matrimonial Court of such place. Subject to the provisions contained in the next following section, the local limits of

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the jurisdiction of such court shall be conterminous with the limits of the district in which it is held. The judge of the principal court of original civil jurisdiction at such place shall be the judge of such matrimonial court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

Power to alter territorial jurisdiction of District Courts.

XVIII. The local Government may from time to time alter the local limits of the jurisdiction of any Parsee district matrimonial court, and may include within such limits any number of districts under its government.

Certain districts to be within the jurisdiction of the Chief Matrimonial Court.

XIX. Any district which the local Government, on account of the fewness of the Parsee inhabitants, shall deem it inexpedient to include within the jurisdiction of any district matrimonial court, shall be included within the jurisdiction of the Parsee chief matrimonial court for the territories under such local Government where there is such court.

Court seal.

XX. A seal shall be made for every court constituted under this Act, and all decrees and orders and copies of decrees and orders of such court, shall be sealed with such seal, which shall be kept in the custody of the presiding judge.

Appointment of delegates.

XXI. The local Government shall, in the presidency towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act. The persons so appointed shall be Parsees: their names shall be published in the official gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a high court, be not more than thirty, and in districts beyond such limits not more than twenty.

Power to appoint new delegates.

XXII. The appointment of a delegate shall be for life. But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the local Government may appoint any other person being a Parsee to be a delegate in his stead; and the name of the person so appointed shall be published in the official gazette.

XXIII. All delegates appointed under this Act shall be

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Delegates to be deemed public servants.

considered to be public servants within the meaning of the Indian Penal Code.

Selection of delegates under Sections 16 and 17 to be from those appointed under Section 21.

XXIV. The delegates selected under the sixteenth and seventeenth sections to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding judge of the court in due rotation from the delegates appointed by the local Government under the twenty-first section.

Practitioners in matrimonial courts.

XXV. All advocates, vakeels, and attorneys-at-law entitled to practise in a high court shall be entitled to practise in any of the courts constituted under this Act; and all vakeels entitled to practise in a district court shall be entitled to practise in any district matrimonial court constituted under this Act.

Court in which suits to be brought.

When defendant has left British India.

XXVI. All suits instituted under this Act shall be brought in the court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit. When the defendant shall at such time have left British India, such suit shall be brought in the court at the place where the plaintiff and defendant last resided together.

IV.—Of Matrimonial Suits.

(a) *For a decree of Nullity.*

In case of lunacy or mental unsoundness.

XXVII. If a Parsee at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage and still continues. Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

In case of non-consummation owing to physical causes.

XXVIII. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

(b) *For a Decree of Dissolution in Case of Absence.*

In case of absence for seven years.

XXIX. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven

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years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

(c) For Divorce or Judicial Separation.

On the ground of the wife's adultery.

XXX. Any husband may sue that his marrirge may be dissolved, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery; and any wife may sue that her marriage may be dissolved, and a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of adultery with a married or fornication with an unmarried woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence. In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband, the court may order the adulterer to pay the whole or any part of the costs of the proceedings.

On the ground of the husband's adultery, &c.

Grounds of judicial separation.

XXXI. If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into or allowed to remain in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

Suits for divorce or judicial separation.

XXXII. In a suit for divorce or judicial separation under this Act, if the court be satisfied of the truth of the allegations contained in the plaint, and that the offence therein set forth has not been condoned, and that the husband and wife are not colluding together, and that the plaintiff has not connived at or been accessory to the said offence, and that there has been no unnecessary or improper

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delay in instituting the suit, and that there is no other legal ground why relief should not be granted, then and in such case, but not otherwise, the court shall decree a divorce or judicial separation accordingly.

Alimony *pendente lite.*

XXXIII. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the court, on the application of the wife, may order the husband to pay her monthly or weekly during the suit such sum, not exceeding one-fifth of the husband's net income, as the court, considering the circumstances of the parties, shall think reasonable.

Permanent alimony.

XXXIV. The court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed. In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries, during the time of such disobedience, for the price or value of such necessaries.

Payment of alimony to wife or to her trustee.

XXXV. In all cases in which the court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the court expedient so to do.

(d) For Restitution of Conjugal Rights.

Suit for restitution of conjuga rights.

XXXVI. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to

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cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly. If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

No suit to be brought to enforce marriage or contract arising out of marriage when husband under 16 years or wife under 14 years.

XXXVII. Notwithstanding anything hereinbefore contained, no suit shall be brought in any court to enforce any marriage between Parsees, or any contract connected with or arising out of any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

Suits may be heard with closed doors.

XXXVIII. In every suit perferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties.

XXXIX. Repealed by Act VII. of 1870.

Provisions of Civil Procedure Code to apply in suits under this Act.

XL. The provisions of the Code of Civil Procedure shall, so far as the same may be applicable, apply to suits instituted under this Act.

Determination of questions of law and procedure, and of fact

XLI. In suits under this Act, all questions of law and procedure shall be determined by the presiding judge, but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Appeal to High Court.

XLII. An appeal shall lie to the high court from the decision of any court established under this Act, whether a chief matrimonial court or a district matrimonial court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground: provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

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Liberty to parties to marry again.

XLIII. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

V.—Of the Children of the Parties.

Custody of children *pendente lite*.

XLIV. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the court may from time to time pass such interim orders and make such provision in the final decree as it may deem just and proper, with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit, and may, after the final decree, upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance and education of such children, as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

Orders as to custody of children after final decree.

Settlement of wife's property for benefit of children.

XLV. In any case in which the court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the court that the wife is entitled to any property either in possession or reversion, the court may order such settlement as it shall think reasonable to be made of such property or any part thereof, for the benefit of the children of the marriage or any of them.

VI.—Of the Mode of enforcing Penalties under this Act.

Cognizance of offences under this Act.

XLVI. All offences under this Act may be tried by any officer exercising the powers of a magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the court of session.

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Punishment of offences under this Act, committed within local limits of High Court.

XLVII. If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the high court, such offence shall be punishable upon summary conviction by any magistrate of police of the place at which such court is held.

Levy of fines by distress.

XLVIII. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's movable property by warrant under the hand of the officer imposing the fine.

Procedure until return is made to distress warrant.

XLIX. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment if no sufficient distress.

L. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient movable property whereupon such fine could be levied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—Miscellaneous.

Rules of procedure of Parsee Matrimonial Courts to be made by the High Court.

LI. Subject to the provisions contained or referred to in this Act, the high court shall make such rules and regulations concerning the practice and procedure of the Parsee chief and district matrimonial courts in the presidency or

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Government in which such high court shall be established, as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same. All such rules, revocations and alterations shall be published in the official gazette.

Power to invest chief executive officer with powers of local Government.

LII. The Governor-General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India, with the powers vested by this Act in a local Government.

Commencement and extent of Act.

LIII. This Act* shall extend to the whole of British India.

SCHEDULE. (*See Section* 6.)

Date and Place of Marriage.	Names of the Husband and Wife.	Condition at the time of marriage.	Rank or profession.	Age.	Residence.	Names of the fathers or guardians.	Rank or profession.	Signature of the officiating priest.	Signatures of the witnesses.	Signature of father or guardian when husband or wife is an infant.

A. D. 1865. ACT XXI.

AN ACT *to define and amend the Law relating to Intestate Succession among the Parsees.*

Passed on the 10*th April* 1865.

Preamble.

WHEREAS it is expedient to define and amend the law relating to Intestate Succession among the Parsees; it is enacted as follows:—

Division of property among widow and children of intestate.

I. Where a Parsee dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of

* See Act XIV. of 1870.

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each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

Division of property among widower and children of intestate.

II. Where a female Parsee dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

Division of property amongst the children of male intestate who leaves no widow.

III. When a Parsee dies leaving children but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

Division of property amongst the children of female intestate who leaves no widower.

IV. When a female Parsee dies leaving children but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

Division of pre-deceased child's share of intestate's property among the widow or widower and issue of such child.

V. If any child of a Parsee intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death, in such manner as if such deceased child had died immediately after the intestate's death.

Division of property when the intestate leaves a widow or widower, but no lineal descendants.

VI. Where a Parsee dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety. Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother. Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate. The next of kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity. If there be no relatives on

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the father's side, the intestate's widow or widower shall take the whole.

Division of property when the intestate leaves neither widow nor widower nor lineal descendants.

VII. When a Parsee dies leaving neither lineal descendants nor a widow or widower, his or her next of kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate. The next of kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

Exemption of Parsees from certain parts of the Indian Succession Act, 1865.

VIII. The following portions of the Indian Succession Act 1865, shall not apply to Parsees (that is to say) the whole of Part III, the whole of Part IV excepting Section 25, the whole of Part V, and Section 43.

THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

(2.) Grandfather and grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4.) Great grandfather and great grandmother.

(5.) Great grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

(1.) Father and mother.

(2.) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.

(3.) Paternal grandfather and paternal grandmother.

(4.) Children of the paternal grandfather, and the lineal

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descendants of such of them as shall have predeceased the intestate.

(5.) Paternal grandfather's father and mother.

(6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.

(7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.

(8.) Maternal grandfather and maternal grandmother.

(9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(10.) Son's widow, if she have not re-married at or before the death of the intestate.

(11.) Brother's widow, if she have not re-married at or before the death of the intestate.

(12.) Paternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15.) Maternal grandfather's father and mother.

(16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.

(17.) Paternal grandmother's father and mother.

(18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.

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A. D. 1866. ACT V.

AN ACT *to provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India.*

Passed on the 23rd February 1866.

Preamble.

WHEREAS it is expedient to provide a summary procedure for the recovery of money due on dishonoured Bills of Exchange, Hundis and Promissory Notes; and whereas inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned; it is enacted as follows:—

Interpretation clause.

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

British India.

"British India" shall mean the territories which are or may become vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*):

High Court.

"High Court" shall mean the high court of judicature at Calcutta, Madras or Bombay, as the case may be:

Local Government.

And in every part of British India in which this Act shall operate, "Local Government" shall mean the person authorized by law to administer executive government in such part.

From and after 1st May 1866, in all suits upon bills of exchange, &c., if plaintiff desires to proceed under this Act, the summons shall be in the form given in the schedule.

II. * All suits upon bills of exchange, hundis or promissory notes commenced in any high court within six calendar months after the same shall have become due and payable, may, in case the plaintiff shall desire to proceed under this Act, be commenced as hereinafter is mentioned, (that is to say) the plaint shall be in the form prescribed by the Code of Civil Procedure; but the summons shall be in the form contained in the schedule to this Act; and in any

* See Act XIV. of 1870.

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case in which the plaint and summons shall be in such form respectively, it shall not be lawful for the defendant to appear to or defend the suit unless he shall obtain leave from a judge as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the high court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Defendant showing a defence upon the merits to have leave to appear.

III. The high court shall, upon application within the period of seven days from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into court the sum mentioned in the summons or upon affidavits satisfactory to the court, which disclose a defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as to the court may seem fit.

Court may, under special circumstances, set aside decree.

IV. After decree, the high court may, under special circumstances, set aside the decree, and if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it shall seem reasonable to the court so to do and on such terms as to the court may seem just.

Court may order bill to be deposited with officer of court in certain cases.

V. In any proceedings under this Act, it shall be competent to the high court to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Remedy for recovery of cost of noting non-acceptance of dishonoured bill.

VI. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such

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dishonour, as he has under this Act for the recovery of the amount of such bill or note.

Civil Procedure Code and rules made thereunder to apply to proceedings under this Act.

VII. The provisions of the Code of Civil Procedure, and all rules made under or by virtue of the said code shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

Local Government may extend Act.

VIII. It shall be lawful for the Local Government to direct that all or any part of the provisions in Sections 2 to 7, both inclusive, of this Act shall, *mutatis mutandis*, apply to all or any courts or court in the territories under such government, other than a high court, and within one month after such order shall have been made and published in the official gazette, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled. In and by any such order the local Government may direct by whom any powers or duties incident to the provisions applied under this Act, shall and may be exercised with respect to matters in such other courts or court, and may make any orders or regulations which may be deemed requisite for carrying into operation in such courts or court the provisions so applied.

IX. & X. Repealed by Act LX of 1872.

Acceptance, of a bill, inland or foreign, to be in writing on it, and signed.

XI. No acceptance of any bill of exchange, whether inland or foreign, made after the first day of May 1866, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

What are to be deemed "inland bills."

XII. Every bill of exchange or promissory note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an inland bill; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such bill or note.

Protest by notary public to be *prima facie* evidence of dishonour.

XIII. Protest of a bill of exchange, whether inland or foreign, when purporting to be made by a notary public, shall be *prima facie* evidence that the bill has been dishonoured.

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Suits on lost negotiable instruments.

XIV. In case of any suit founded upon a bill of exchange or other negotiable instrument, if it shall be proved to the satisfaction of the court that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, it shall be lawful for the court to make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Rights under marine and fire policies to vest in assignees.

XV. Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

SCHEDULE.

No. of Suit.

In the High Court of

Plaintiff.

Defendant.

To [*here enter the defendant's name, description and address*]

Whereas [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under Act No. V. of 1866 (*to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India*) for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the payee [*or* Indorsee] of a Bill of Exchange [*or* Hundi *or* Promissory Note] of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within seven days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you, In default whereof the plaintiff will be

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entitled at any time after the expiration of such seven days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the Bill of Exchange, Hundi or Promissory Note, and all endorsements upon it.*]

A. D. 1866. ACT XXI.

AN ACT *to legalize, under certain circumstances, the dissolution of Marriages of Native Converts to Christianity.*

Passed on the 2nd April 1866.

Preamble.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; it is enacted as follows:—

Short title.

I. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866."

Commencement of Act.

II. This Act shall commence and take effect on and from the first day of May 1866.

III. In this Act—

Interpretation of terms. Native Husband.

"Native Husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

Native Wife.

"Native Wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan, nor a Jewess:

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"Native Law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews : Native law.

"Month" and "year" shall respectively mean month and year according to the British calendar : Month and year.

"High Court" shall mean the highest civil court of appeal in any place to which this Act extends : High Court.

And, unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular. Number.

IV. If a native husband change his religion for Christianity, and if in consequence of such change his native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society. Convert deserted by his wife on religious grounds may sue for conjugal society.

V. If a native wife change her religion for Christianity, and if in consequence of such change her native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society. Convert deserted by her husband on religious grounds may sue for conjugal for society.

VI. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the high courts of judicature, the suit shall be commenced in such court : otherwise it shall be commenced in the principal civil court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit. Court in which suit shall be brought.

VII. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow. The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition* may be amended by permission of the court. Suit to be commenced by verified petition.

VIII. A copy of the petition shall be served upon the respondent, and the court shall thereupon issue a citation under the seal of the court and signed by the judge. On service of petition, citation issued to respondent.

* See Act VII. of 1870.

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Form of citation.

IX. In ordinary cases, the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow. But where the respondent is extempt by law from personal appearance in court, or where the judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

Service of citation.

X. A copy of the citation sealed with the seal of the court shall be served on the respondent; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Procedure where respondent does not obey citation.

XI. If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under Section 174 of the Indian Penal Code.

Points to be proved on appearance of petitioner.

XII. On the day fixed in the citation, the petitioner shall appear in court, and the following points shall be proved:—

(1.) The identity of the parties:

(2.) The marriage between the petitioner and the respondent:

(3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4.) The desertion or repudiation of the petitioner by the respondent:

(5.) That such desertion or repudiation was in consequence of the petitioner's change of religion:

(6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

XIII. The respondent, if such points be proved to the satisfaction of the judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal. In ordinary cases such interrogation and every other interrogation prescribed by

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this Act shall be made by the judge, but when the respondent is exempt by law from personal appearance in court, or when the judge shall, in his discretion, excuse the respondent from such appearance, the interrogation shall be made by commissioners acting under such commission as hereinafter mentioned.

Interrogations by judge may be public or private.

XIV. Every interrogation mentioned in this Act and made by the judge may, at the discretion of the judge, take place in open court or in his private room. If any such interrogation take place in open court, the judge may, so long as it shall continue, exclude from the court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

XV. If the respondent be a female, and in answer to the interrogatories of the judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the judge shall direct, and in the presence of such person or persons (who may be a female or females) as the judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment for a year.

Interview.

Procedure on expiration of adjournment.

XVI. At the expiration of such adjournment, the petitioner shall again appear in court, and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the judge, and if the respondent on being interrogated by the judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the judge shall, by a decree under his hand and sealed with the seal of his court, declare that the marriage between the parties is dissolved.

Interrogation of respondent.

Decree.

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Decree in case of male respondent refusing to cohabit on the ground of petitioner's change of religion.

XVII. If the respondent be a male, and in answer to the interrogatories of the judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year. At the expiration of such adjournment, the petitioner shall again appear in court; and if the respondent on being interrogated by the judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the judge shall thereupon pass such a decree as last aforesaid: provided that if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

Decree if respondent so refuse in the case of an unconsummated marriage, either party being *impubes* at time of marriage.

XVIII. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the judge shall thereupon pass such a decree as last aforesaid.

Liberty to parties to marry again.

XIX. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any native law to the contrary notwithstanding. Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge may order commission to issue for examination of exempted persons.

XX. In suits instituted under this Act, the judge shall order a commission to issue to such persons, whether males or females, or both, as he shall think fit, for the examina-

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tion on interrogatories or otherwise of any persons so exempt as aforesaid. The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of the marriage and the desertion or repudiation of petitioner in consequence of conversion.

XXI. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Provisions of Civil Procedure Code as to witnesses to apply in suits under this Act.

XXII. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses, shall apply in suits instituted under this Act.

Dismissal of suit if either party is under the age required by the Act, or if the parties are cohabiting, or the respondent is willing to cohabit.

XXIII. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

XXIV. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the

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judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Petitioner's cruelty or adultery to bar the suit.

XXV. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the court shall pass a decree dismissing the suit and stating the ground of such dismissal. A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar the suit.

XXVI. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the court shall pass a decree dismissing the suit and stating the ground of such dismissal. The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or rights of children.

XXVII. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to court to award alimony.

XXVIII. If a suit be commenced under the provisions of this Act, and it appear to the court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit. If the suit be brought by a husband against a wife, the court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the court shall think just, and having regard to the condition and station in life of the parties. Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

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No appeal under this Act; but the judge may state case raising question whether conversion has dissolved marriage.

XXIX. No appeal shall lie against any order or decree made or passed by any court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a native husband or a native wife (as the case may be) within the meaning of this Act, the judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the high court.

Case to state necessary facts and documents, and suit to be stayed.

XXX. Every such case shall concisely set forth such facts and documents as may be necessary to enable the high court to decide the question raised thereby, and the suit shall be stayed until the judgment of such court shall have been received as hereinafter provided.

Case to be decided by three judges.

XXXI. Every such case shall be decided by at least three judges of the high court, if such court be the high court at any of the presidency towns; and the petitioner and respondent may appear and be heard in the high court in person or by advocate or vakeel.

High Court may refer case to judge for additions or alterations.

XXXII. If the high court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the high court may refer the case back to the judge by whom it was stated, to make such additions thereto or alterations therein as the high court may direct in that behalf.

High Court may decide question raised, and judge shall dispose of case accordingly.

XXXIII. It shall be lawful for the high court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the judge by whom the case was stated, a copy of such judgment under the seal of the court and the signature of the registrar, and the judge shall, on receiving the same, dispose of the case conformably to such judgment.

Saving of Roman Catholic marriages.

XXXIV. Nothing contained in this Act or in Acts Nos. XXV. of 1864 and V. of 1865 shall be taken to render invalid

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any marriage of a native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church: and no clergyman of such church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnizing any such marriage.

Extent of Act.

XXXV. This Act shall extend to all the territories that are or shall become vested in Her Majesty or her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca. But it may be extended, with the consent of the Governor-General of India in Council, by order of the Governor of such settlement, to all or any part of the territory subject to his government; and he may, with such consent as aforesaid, determine the court in which suits against residents in such territory shall be commenced under the provisions of this Act. In case of such extension, if the Indian Penal Code shall not then apply to the said settlement, the respondent's personal appearance pursuant to this Act may be enforced by such procedure as the said Governor, with such consent as aforesaid, shall provide in that behalf.

THE FIRST SCHEDULE.

Form of Petition.

Stamp. Rs. Two.

To the judge of the Civil Court of

The day of 18

The petition of A. B. of

Sheweth:—

1. That your petitioner was born on or about the day of 18 .

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2. That your petitioner was on the day of in the year 18 lawfully married to C. D. at.

3. That the said C. D. is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of

6. That on the day of 18 . [*at least six months prior to the date of the petition*], the said C. D. deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said C. D.

Your petitioner therefore prays that your honor will order the said C. D. to live and cohabit with your petitioner or declare that your petitioner's marriage is dissolved.

A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

Form of Citation in ordinary cases.

To C. D., of

Whereas A. B. of claiming to have been lawfully married to you the said C. D. has filed his [*or* her] petition against you in the Civil Court of alleging that you the said C. D. have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his

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[*or* her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition; a copy thereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under Section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) E. F.
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within named C. D. of at on the day of 18

(Signed) G. H.

THE THIRD SCHEDULE.

Form of Citation in case of Respondent exempt from appearance in Court.

To C. D., of

Whereas A. B. of claiming to have been lawfully married to you the said C. D. has filed his [*or* her] petition against you in the Civil Court of alleging that you the said C. D. have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this

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court, in reference to the said petition; a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under Section 174 of the Indian Penal Code.

Dated the day of 18

(Signed) E. F.

Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by G. H. on the within named C. D. of at on the day of 18

(Signed) G. H.

A. D. 1866.* ACT XXV.

AN ACT *to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay, and in the Supreme Court of the Straits Settlement, and the proceeds of certain estates in the charge of the Administrator General of Bengal.*

Passed on the 11th July 1866.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay, and in the Supreme Court of the Straits Settlement, in the course of suits in the said courts or in the late Supreme Courts at Calcutta, Madras and Bombay respectively, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of Preamble.

* So much of this Act as relates to the Administrator General of Bengal, repealed by Act XXIV. of 1867.

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government: and whereas it is also expedient that the net proceeds of all estates administered under the orders of the said Supreme Court of the Straits Settlement, or in the official charge of the Administrator General of Bengal, and now or hereafter appearing from the official books and accounts to have been in official custody for a period of fifteen years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the purposes aforesaid; it is hereby enacted as follows:—

Monies deposited in High Courts and Supreme Court Straits Settlement, and unclaimed for twenty years, to be transferred to Government.

I. All securities and sums of money deposited in the said high courts or supreme court of the Straits Settlement, or any of them, in the course of suits in any of the said courts, or of the late supreme courts of Calcutta, Madras and Bombay, and now or hereafter appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

Proceeds of estates administered under order of Supreme Court Straits Settlement, or in charge of administrator general of Bengal, and unclaimed for fifteen years, to be transferred to Government.

II. The net proceeds of all estates administered under the orders of the said supreme court of the Straits Settlement, or in the official charge of the administrator general of Bengal, and now or hereafter appearing from the official books and accounts to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

Transfer not to be made pending suits.

III. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof.

Repayment on subsequent establishment of claim.

IV. If any claim shall hereafter be made to any part of the securities, monies or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and monies transferred and paid under the first section of this Act, be established to the satisfaction of the high court, or supreme court, as the case may be, from which the

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transfer shall have been made, and, in the case of proceeds transferred and paid under the second section of this Act by order of the supreme court of the Straits Settlement, be established to the satisfaction of the same court, and, in the case of proceeds transferred and paid under the same section by the administrator general of Bengal for the time being, be established to the satisfaction of the said administrator general and the accountant general to the Government of Bengal respectively, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant. If any such last-mentioned claim shall not be established to the satisfaction of the said administrator general and accountant general, the claimant may apply by petition to the high court of judicature at Fort William, on its original side, against the Government of India and the administrator general of Bengal for the time being, and after taking evidence, either orally or on affidavit in a summary way, as the said court shall think fit, the said court shall make such order on the petition for the payment of such portion of the principal sum as justice shall require, and such order shall be binding on all parties to the suit.

A. D. 1866. ACT XXVII.

AN ACT *to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.*

Passed on the 25th October 1866.

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of movable and immovable property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable; it is hereby enacted as follows :—

I. Repealed by Act XIV. of 1870.

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Interpretation.

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

Immovable property.

"Immovable property" shall extend to and include messuages, tenements and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein:

Stock.

"Stock" shall mean any fund, annuity or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India:

Hold and holding.

"Hold" and "Holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity or expectancy, in any immovable property:

Contingent right.

"Contingent right" as applied to immovable property shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent:

Convey. Conveyance.

"Convey" and "Conveyance" applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immovable property which such person holds, or in which he is entitled to a contingent right either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of Act XXXI. of 1854 (*to abolish real actions and also fines and common recoveries, and to simplify the modes of conveying Land in cases to which the English law is applicable*):

Transfer.

"Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or

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government securities can transfer such stock or government securities from himself to another:

"High Court" shall mean every court now or hereafter established under the Statute 24 & 25 Vic., cap. 104, and also the chief court of the Punjab, or such one or more judges of the said courts respectively as shall be appointed by the chief justice or the senior judge, as the case may be, to entertain applications and make orders under this Act: High Court.

"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person: Trust. Trustee.

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs: Lunatic.

"Person of unsound mind" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs: Person of unsound mind.

In the case of a will made or an intestacy occurring before the first day of January 1866, "Heir" shall mean the person claiming an interest in the immovable property of a deceased person under the laws concerning descent applicable to such property; and "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immovable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent: Heir and devisee.

In the case of a will made or an intestacy occurring on or after the first day of January 1866, "heir" shall mean any person claiming an interest in the immovable property of a deceased person under the rules for the distribution of an intestate's estate; and "devisee" shall mean any person

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taking immovable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immovable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

Mortgage. "Mortgage" shall be applicable to every estate or interest in immovable or movable property which would in the high court be deemed merely a security for money:

Person. "Person" shall include any company or association, or body of persons whether incorporated or not:

Number. Gender. Words importing the singular number only shall extend to several persons or things; words importing the plural number shall apply to one person or thing; words importing the masculine gender shall extend to a female.

The High Court to have juridiction in what cases. III. The powers and authorities given by this Act to the high courts shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said courts respectively.

High Court may convey estates of lunatic trustees and mortgagees; IV. When any lunatic or person of unsound mind shall hold any immovable property upon any trust or by way of mortgage, it shall be lawful for the high court to make an order that such property be vested in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

And may convey contingent rights. V. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the high court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said high court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

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VI. When any lunatic or person of unsound mind shall be solely entitled to any stock or government securities, or to any thing in action upon any trust or by way of mortgage, it shall be lawful for the high court to make an order vesting in any person or persons the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof: and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or government securities or thing in action upon any trust or by way of mortgage, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said high court may appoint.

High Court may transfer stock or government securities of lunatic trustees and mortgagees.

VII. When any stock or government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when any thing in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the high court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said court may appoint.

Power to transfer stock or government securities of deceased persons.

VIII. Where any minor shall hold any immovable property upon any trust or by way of mortgage, it shall be lawful for the high court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

High Court may convey estates of minor trustees and mortgagees.

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Contingent rights of minor trustees and mortgagees.

IX. Where any minor shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the high court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

High Court may convey the estate of a trustee out of the jurisdiction of the court.

X. When any person solely holding any immovable property upon any trust shall be out of the jurisdiction of the high court, or cannot be found, it shall be lawful for the said court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the ame estate.

High Court may make order in cases where persons hold immovable property in trust jointly with persons out of jurisdiction of court, &c.

XI. When any person or persons shall hold any immovable property in trust jointly with a person not within the jurisdiction of the high court, or who cannot be found, it shall be lawful for the said court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said court shall direct, and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

Contingent rights of trustees.

XII. When any person solely entitled to a contingent right in any immovable property upon any trust shall be out of the jurisdiction of the high court, or cannot be found, it shall be lawful for the said court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

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High Court may make order in cases where persons are jointly entitled with others out of the jurisdiction of the court to a contingent right in immovable property.

XIII. When any person jointly entitled with any other person or persons to a contingent right in any immovable property upon any trust shall be out of the jurisdiction of the high court, or cannot be found, it shall be lawful for the said court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

When it is uncertain which of several trustees was the survivor.

XIV. Where there shall have been two or more persons jointly holding any immovable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the high court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

When it is uncertain whether the last trustee be living or dead.

XV. Where any one or more person or persons shall have held any immovable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the high court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.

When trustee dies without an heir.

XVI. When any person holding any immovable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the high court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly

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executed a conveyance of the property in the same manner for the same estate.

Contingent right of unborn trustee.

XVII. When any immovable property is subject to a contingent right in an unborn person, or class of unborn persons who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the high court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

Power to make an order for vesting the estate on refusal or neglect of a trustee to convey or release.

XVIII. In every case where any person holds or shall hold jointly or solely any immovable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the high court, if the said court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate as the court shall direct, or releasing such contingent right in such manner as the court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

Power to convey in place of mortgagee.

XIX. When any person to whom any immovable property has been conveyed by way of mortgage, shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of

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such property, then in any of the following cases, it shall be lawful for the high court to make an order vesting such property in such person or persons in such manner and for such estate as the said court shall direct, that is to say,—

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the high court, or cannot be found:

When an heir or devisee of such mortgagee shall upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

When it shall be uncertain which of several devisees of such mortgagee was the survivor:

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead:

When such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee:

And the order of the said high court made in any one of the foregoing cases, shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

Power to appoint a person to convey in certain cases.

XX. In every case where the high court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immovable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the high court, should it be deemed more convenient, to make an order appointing a person to convey such property or release or dispose of such contingent right; and the conveyance, or release or disposition of the

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person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the high court would in the particular case have had under the provisions of this Act. In every case where the high court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the high court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order; and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

When trustees of stock or government securities out of the jurisdiction.

XXI. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the high court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or government securities or thing in action upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said court may appoint. When any sole trustee of any stock, government securities, or thing in action shall be out of the jurisdiction of the said court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said court may appoint.

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When trustee of stock, &c., refuses to transfer.

XXII. Where any sole trustee of any stock, government securities, or thing in action, shall neglect or refuse to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the high court to make an order vesting the sole right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said court may appoint.

When one of several trustees of stock, &c., refuses to transfer or receive and pay over dividends.

XXIII. Where any one of the trustees of any stock, government securities, or thing in action, shall neglect or refuse to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the high court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, government securities, or thing in action, or in any person or persons whom the said court may appoint jointly with such other trustee or trustees.

When stock, &c., is standing in the name of a deceased person.

XXIV. When any stock or government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the high court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the space

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of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said court may appoint.

Effect of an order vesting the legal right to transfer stock, &c.

XXV. Where any order shall have been made under this Act vesting the right to any stock or government securities in any person or persons appointed by the high court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock and government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order. All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the persons in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made. After notice in writing of any such order of the high court concerning any stock or government securities shall have been given, it shall not be lawful for any company or association, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or government securities, or the payment of the dividends, interest or income thereof.

Effect of an order vesting legal right in a thing in action.

XXVI. Where any order shall have been made under this Act by the high court vesting the legal right to sue for

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or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.

On neglect to transfer stock, &c., for twenty-eight days, order may be made vesting right to transfer in such person as the court shall appoint.

XXVII. Where any person shall neglect or refuse to transfer any stock or government securities, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the high court for that purpose shall have been served upon him, it shall be lawful for the said court to make an order vesting all the right of such person to transfer such stock or government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said court may appoint.

On like neglect by executor, similar order may be made.

XXVIII. When any stock or government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or government securities, or receive the dividend, interest or income thereof for the space of twenty-eight days next after an order of the high court for that purpose shall have been served upon him, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said court may appoint.

Companies and Associations to comply with such orders.

XXIX. When any order being or purporting to be under this Act shall be made by the high court, vesting the right to transfer any stock or government securities, or vesting the right to call for the transfer of any stock or government securities in any person or persons, in every such case the legal right to transfer such stock or government securities shall vest accordingly; and the person or persons so ap-

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pointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock or government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order. All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Power to make an order for the transfer or receipt of dividends of stock, &c., in name of a minor trustee.

XXX. When any minor shall be solely entitled to any stock or government securities upon any trust, it shall be lawful for the high court to make an order vesting in any person or persons the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof. When any minor shall be entitled jointly with any other person or persons to any stock or government securities upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock or government securities, or to receive the dividends, interest or income thereof, either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said court may appoint.

When a decree is made for sale of immovable property for payment of debts.

XXXI. When a decree or order shall have been made by the high court directing the sale of any immovable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act: and the high court is hereby empowered to make an order wholly discharging the contingent right under the will of such deceased debtor of any unborn person.

High Court may make an order for

XXXII. When any decree or order shall have been made by the high court, whether before or after the pas-

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ing of this Act, directing the sale of any immovable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act. In every such case, it shall be lawful for the high court, if the said court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the court shall think fit, either in any purchaser or in such other person as the court shall direct. Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

vesting the estate in lieu of conveyance by a party to the suit after a decree or order for sale.

XXXIII. Where any decree or order shall be made by the high court for the specific performance of a contract concerning any immovable property, or for the partition or exchange of any immovable property, or generally when any decree shall be made for the conveyance of any immovable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act. Thereupon it shall be lawful for the high court to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said court might, under the provisions of this Act, make concerning the estates, rights and interests of trustees born or unborn.

Court to declare what parties are trustees of immovable property comprised in any suit, and as to the interests of persons unborn.

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Power to make directions how the right to transfer stock shall be exercised.

XXXIV. It shall be lawful for the high court to make declarations and give directions concerning the manner in which the right to any stock, government securities or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to court to make order appointing new trustees.

XXXV. In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the high court, it shall be lawful for the said court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for or in addition to him or them. The person or persons who, upon the making of such order shall be trustee or trustees, shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

New trustees to have powers of trustees appointed by decree in suit.

Powers to court to vest immovable property in new trustee.

XXXVI. It shall be lawful for the high court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immovable property subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees for such estate as the court shall direct. Such order shall have the same effect as if the person or persons who, before such order, was or were the trustee or trustees (if any) had duly executed all proper conveyances of such property for such estate.

Power to court to vest right to sue in new trustees.

XXXVII. It shall be lawful for the high court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or government securities to the trust, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect

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thereof, in the person or persons who upon the appointment shall be the trustee or trustees.

Old trustees not to be discharged from liability.

XXXVIII. Any such appointment by the high court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

Who may apply.

XXXIX. An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or new trustees, or concerning any immovable property, stock or government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immovable property, stock, government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof, and an order under any of the provisions hereinbefore contained, concerning any immovable property, stock, government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the monies secured by such mortgage.

Application may be by petition.

XL. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the high court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

What may be done upon petition.

XLI. Upon the hearing of any such petition, it shall be lawful for the said high court, should it be deemed necessary, to direct a reference to one of the judges of the court to inquire into any facts which require such an investigation, or it shall be lawful for the said court to direct such petition to stand over, to enable the petitioner to adduce

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evidence or further evidence before the court, or to enable notice or any further notice of such petition to be served upon any person or persons.

Court may dismiss petition with or without costs.

XLII. Upon the hearing of any such petition, it shall be lawful for the high court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

Power to make an order in a cause.

XLIII. Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the judges of the court, the facts necessary for an order under this Act shall appear to the high court to be sufficiently proved, it shall be lawful for the said court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act.

Orders made by the High Court founded on certain allegations to be conclusive evidence of the matter contained in such allegations.

XLIV. Whenever any order shall be made under this Act by the high court, for the purpose of conveying any immovable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the high court, or cannot be found, or that it is uncertain which of several trustees, or which several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the high court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any court of civil judicature upon any question as to the legal validity of the order: provided always, that nothing herein contained shall prevent the high court directing a re-conveyance of any immovable property conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said court to direct any of the parties to any suit concerning such property or contingent right, to

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pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.

Trustees of charity.

XLV. It shall be lawful for the high court to exercise the powers herein conferred for the purpose of vesting any immovable property, stock, government securities, or thing in action in the trustee or trustees of any charity or society, over which charity or society the high court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said court, or by order made upon a petition to the said court.

Money of minors and persons of unsound mind to be paid into court.

XLVI. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immovable property, stock, government securities, or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable, to pay the same into the high court, in trust in any cause then depending concerning such money, or if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said court; and it shall be lawful for the said court, upon petition in a summary way, to order any money so paid to be invested in government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said court shall seem reasonable.

Court may make a decree in the absence of a trustee.

XLVII. Where in any suit commenced or to be commenced in the high court, it shall be made to appear to the court that diligent search and enquiry have been made after any person made a defendant, who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the court, and had appeared at the hearing of such cause: provided always that no such decree shall bind, affect, or in any wise

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prejudice any person against whom the same shall be made without service of process upon him as aforesaid, his heirs, executors, or administrators for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

Orders made under this Act to be chargeable with the same stamp duty as deeds of conveyance.

XLVIII. Every order to be made under this Act, which shall have the effect of a conveyance of any immovable property, or a transfer of any such stock, government securities, or thing in action, as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed or a transfer made by the person holding such property or entitled to such stock, government securities, or thing in action. Every such order shall be duly stamped for denoting the payment of the said duty.

Costs may be paid out of the estate.

XLIX. The high court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immovable or movable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said court shall think proper.

Enquiry concerning person of unsound mind.

L. Upon any petition being presented under this Act to the high court concerning a person of unsound mind, it shall be lawful for the said court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs. Such order shall have the same effect as the like order made under Section I of Act XXXIV of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the lastmentioned Act. The high court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded.

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Suit may be directed

LI. Upon any petition under this Act being presented to the high court, it shall be lawful for the said court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

Indemnity to all persons obeying orders passed under this Act.

LII. Every order made or purporting to be made under this Act by the high court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the high court has jurisdiction to make the same.

Orders under the Act to be executed as, and have the effect of decrees.

LIII. Any order made by the high court under this Act shall have the same effect and be executed in the same manner as a decree.

Short title.

LIV. This Act may be cited as "The Indian Trustee Act, 1866."

From 1st February 1867, this Act to apply to Straits' Settlement.

LV. On and after the first day of February 1867 (but not till then), the powers and authorities given by this Act to the high courts, shall and may be exercised by the court of judicature of the Settlement of Prince of Wales' Island, Singapore and Malacca, with respect to movable and immovable property within the local limits of the jurisdiction of that court; and, in the said Settlement, Section 2 of this Act shall be read as if the words and figures "first day of February 1867" were substituted for the words and figures "first day of January, 1866."

A. D. 1866. ACT XXVIII.

AN ACT *to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of property and relieve Trustees.*

Passed on the 24th October 1866.

Preamble.

WHEREAS it is expedient that in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills and other instruments, should be made incident to the estates of the persons inter-

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ested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; it is enacted as follows:—

Interpretation of terms.

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

Immovable property.

"Immoveable Property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:

Mortgage.

"Mortgage" shall be taken to include every instrument by virtue whereof immovable property is in any manner conveyed, pledged, or charged as security for the repayment of money or money's worth lent, and to be re-conveyed, or released on satisfaction of the debt:

Mortgagor.

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge, or charge as aforesaid shall be made:

Mortgagee.

"Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred: and

High Court.

"High Court" means any court established or to be established under Statute 24 & 25 Vic., cap. 104, and includes the chief court of the Punjab and the supreme court of judicature of the Settlement of Prince of Wales' Island, Singapore and Malacca.

Trustees empowered to sell in lots, and either by public auction or private contract.

II. In all cases where, by any will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event over any immovable property named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times

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III. It shall be lawful for the persons making any such sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to re-sell the property which shall be so bought in or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby; and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.

Sale may be made under special conditions, and trustees may buy in, &c.

IV. For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question, in such manner as may be necessary.

Trustees exercising power of sale, &c., empowered to convey.

V. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale; and until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid: provided that if the will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

Money arising from sales, to be laid out in the manner indicated in the will, &c.

Until it is so laid out, money to be invested in government securities.

Powers of Mortgagees.

VI. Where any principal money is secured or charged by deed on any immovable property, or on any interest therein, the person to whom such money shall for the time being be

Powers incident to mortgagees.

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payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely :—

1*st*.—A power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner :

2*nd*.—A power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

Receipts for purchase money sufficient discharges.

VII. Receipts for purchase money given by the person or persons exercising the power of sale hereby conferred, shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase money.

Notice to be given before sale; but purchaser relieved from inquiry as to circumstances of sale.

VIII. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property; but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power, shall have his remedy in damages against the person or persons selling.

Application of purchase money.

IX. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as fol-

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lows:—first, in payment of all the expenses incident to the sale or incurred in any attempted sale; secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and thirdly, in discharge of all the principal monies then due in respect of such charge; and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.

Conveyance to the purchaser.

X. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of: provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee simple at the date of the mortgage.

Owner of charge may call for title deeds and conveyance of legal estate.

XI. At any time after the power of sale hereby conferred shall have become exercisable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of; and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

Appointment of receiver.

XII. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid, may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one such persons to be receiver, or if no person be so named,

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then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit. No person shall be ineligible for the office of receiver merely because he is an officer of the high court.

Receiver deemed to be the agent of the mortgagor.

XIII. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

Powers of receiver.

XIV. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

Receiver may be removed.

XV. Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

Receiver to receive a commission not exceeding five per cent.

XVI. Every receiver appointed as aforesaid, shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.

Receiver to ensure if required.

XVII. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or

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damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable.

Application of money received by him.

XVIII. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of government revenue and of all taxes, rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.

This part to relate to charges by way of mortgage only.

XIX. The powers and provisions contained in Sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

Leases.

Restriction on effect of license to alien.

XX. Where any licence to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such licence, in the same manner as if no such licence had

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been given; and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorized to be done.

Restricted operation of partial licences.

XXI. Where in any lease heretofore granted or to be hereafter granted, there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a licence at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

Apportionment of conditions of re-entry to certain cases.

XXII. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Rent-charges.

Release of part of land charged, not to be an extinguishment.

XXIII. The release from a rent-charge of part of the immovable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property

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released, without prejudice nevertheless to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.

Powers.

Mode of execution of powers.

XXIV. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity: provided always, that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument: and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

Legatee in trust may raise money by sale, notwithstanding want of express power in the will.

XXV. Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his immovable property or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract of

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the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other; and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given by last section extended to servivors, legatees, &c.

XXVI. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the high court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

Executors to have power of raising money, &c., where there is no sufficient bequest.

XXVII. If any testator who shall have created such a charge as is described in Section 25 of this Act, shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will, shall have the same or the like powers of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.

Purchasers, &c., not bound to enquire as to powers.

XXVIII. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by Sections 25, 26 and 27 of this Act, or any of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Inheritance.

Descent how to be traced.

XXIX. In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immovable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall

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descend, and the descent shall thenceforth be traced from the person last entitled to the property as if he had been the purchaser thereof. This section shall be read as part of Act No. XXX of 1839 (*for the amendment of the law of inheritance.*)

Assignment of Movables and Terms for Years.

Assignment to self and others.

XXX. Any person shall have power to assign movable property now by law assignable, terms for years of immovable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Purchasers.

Not to be bound to see to the application of purchase money, &c.

XXXI. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.

Investment of Trust Funds.

On what securities trust funds may be invested.

XXXII. Trustees having trust money in their hands which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature: provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

Trustees and Executors.

Trustees may apply income of property of minors, &c., for their maintenance.

XXXIII. In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any

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event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not; and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen: provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the current year.

Provisions for appointment of new trustees on death, &c.

XXXIV. Whenever any trustee, either original or substituted, and whether appointed by any high court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee) by writing to

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appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid. So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require. Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any high court either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating the trust. The official trustee may with his consent, and by the order of the high court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

Appointment of new trustee in place of trustee predeceasing testator.

XXXV. The power of appointing new trustees hereinbefore contained, may be exercised in cases where a trustee nominated in a will has died in the life-time of the testator

Trustee's receipts to be discharges.

XXXVI. The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.

XXXVII. Every deed, will, or other instrument creating a trust either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following,

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that is to say, "that the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

Executors may compound, &c.

XXXVIII. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

Trustee, &c., making payment under power of attorney, not to be liable by reason of death of party giving such power.

XXXIX. No trustee, executor or administrator making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney, shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power: provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor or admi-

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nistrator, was not known to him: provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made; but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor or administrator, if the money had not been paid away under such power of attorney.

As to liability of executor or administrator in respect of rents, covenants or agreements.

XL. Where an executor or administrator liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be) of the estate of the deceased to meet any future liability under the said lease or agreement for a lease. The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease. Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

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As to liability of executor, &c., in respect of rents, &c., in conveyance on rent-charge.

XLI. In like manner, where an executor or administrator liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance, or agreement for a conveyance. The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance. Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

As to distribution of the assets of testator or intestate after notice given by executor and administrator.

XLII. When an executor or administrator shall have given such or the like notices, as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the high court in an administration suit, for creditors and others to send in

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to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be. Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Trustee, executor, &c., may apply by petition to judge of High Court for opinion, advice, &c., in management, &c., of trust property.

XLIII. Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the high court for the opinion, advice or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate. Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said judge shall think expedient. The trustee, executor or administrator acting upon the opinion, advice or direction given by the said judge be shall deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application: provided nevertheless that this Act shall not extend to indemnify any trustee, executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment, or misrepresentation in obtaining such opinion, advice or direction: and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made.

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General Provisions.

Tenants for life, &c., may execute powers, notwithstanding incumbrances.

XLIV. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immovable or movable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

Operation of Act.

XLV. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date, and only to property in British India and to cases to which English law is applicable.

Short title.

XLVI. This Act may be called "the Trustees and Mortgagees' Powers Act, 1866."

From first February 1867, Act to apply to Straits Settlement.

XLVII. On and after the first day of February 1867, but not till then, this Act shall apply to the Settlement of Prince of Wales' Island, Singapore and Malacca; and, in the said settlement, Section 29 of this Act shall be read as if the words and figures "first day of February 1867" were substituted for the words and figures, "first day of January 1866."

A. D. 1867. ACT IX.

AN ACT *to make further provision for suits by and against the Comptoir D'Escompte of Paris.*

Passed on the 8th February 1867.

Preamble.

WHEREAS it is expedient to make further provision for suits and other proceedings by or on behalf of or against the Comptoir D'Escompte of Paris; it is hereby enacted as follows:—

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Construction of certain Sections of Act No. VIII. of 1864.

I. In Act No. VIII. of 1864 (*to enable the "Comptoir D'Escompte of Paris" to sue and be sued in the name of the Chief Manager of the Indian Agencies of the said Company*) Sections 2, 3, 4, 5, 12 and 13, the expressions 'Chief Manager of the Agencies in British India of the said Comptoir D'Escompte' and 'Chief Manager' shall be taken to include any person for the time being acting as chief manager of the said agencies, or being or acting as manager of such one of the same agencies as may be situate within the jurisdiction of the court in which the suit or proceeding mentioned in any of the said sections may be instituted or carried on.

Act to be read with Act VIII. of 1864.

II. This Act shall be read with and taken as part of the said Act No. VIII. of 1864.

A. D. 1867. ACT X.

AN ACT *to empower Courts of Small Causes in the Mofussil to refer for decision questions arising previous to the hearing of suits or in the execution of decrees or orders.*

Passed on the 15th February 1867.

Preamble.

WHEREAS it is expedient to enable the courts constituted under Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*) to refer for the decision of the high court within whose jurisdiction they may respectively be situate, questions of law or usage having the force of law arising previous to the hearing of suits under the said Act, or in the execution of decrees or orders in such suits; it is hereby enacted as follows:—

Power to refer to High Court questions arising previous to the hearing of suits or in the execution of decrees or orders.

I. If at any point in the proceedings previous to the hearing of a suit under the said Act, or if in the execution of the decree or order in any such suit, any question of law or usage having the force of law shall arise, the court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than

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five hundred rupees, shall draw up a statement of the case, and refer it with the court's own opinion thereon to the decision of the high court within whose jurisdiction such court may be situate. If the question has arisen previous to the hearing, the court may either stay such proceedings, or proceed in the case notwithstanding such reference, and pass a decree contingent upon the opinion of the high court upon the point referred. If a decree has been made, the execution of the decree shall be stayed until the receipt of the order of the high court upon such reference. All the provisions contained in this section shall apply, *mutatis mutandis*, to the stating of a case by a registrar.

This Act to be read with Act XI. of 1865.

II. This Act shall be read with and taken as part of Act No. XI. of 1865; and the provisions contained in Sections 24, 25, 26, 27 and 28 of that Act, shall, *mutatis mutandis*, apply to cases referred under this Act.

A. D. 1867. ACT XVI.

AN ACT *to authorize the making of acting appointments to certain Judicial Offices.*

Passed on the 1*st March* 1867.

Preamble.

WHEREAS the Governor General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the judges of certain courts in British India: and whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such judges, and it is expedient to remove such doubts; it is hereby enacted as follows:

Powers to appoint acting judges.

I. In every case in which the Governor General of India in Council, or the local Government, as the case may be, has power under any Act or regulation to appoint a judge of any court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent judge of such court, to act as judge of the same court for such time as the Governor General of India in Council or the local Government, as the case may

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be, shall direct. Every person so appointed to act temporarily as a judge of any such court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent judge of the same court.

II. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act. Certain enactments to be constructed as if they contained a clause like Section 1 of this Act.

A. D. 1867. ACT XXIV.

AN ACT *to consolidate and amend the law relating to the office and duties of Administrator General.*

Passed on the 22nd March 1867.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator General; it is hereby enacted as follows :— Preamble.

PART I.

PRELIMINARY.

I. This Act may be called "The Administrator General's Act, 1867." Short title.

II. Repealed by Act XIV. of 1870.

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

"Presidency of Bengal" includes the territories which are or shall for the time being be respectively under the governments of the Lieutenant Governors of Bengal, the North-Western Provinces and the Panjab, and under the administrations of the Chief Commissioners of Oudh, the Central Provinces, and British Burmah: "Presidency of Bengal."

"Presidency of Madras" includes the territories which are or shall for the time being be under the government of the Governor of Fort St. George in Council, Coorg, and also, so so far as regards British subjects, Mysore and the Hyderabad Assigned Districts: Presidency of Madras.

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"Presidency of Bombay."

"Presidency of Bombay" means the territories which are or shall for the time being be under the government of the Governor of Bombay in Council:

Presidency town.

"Presidency Town" means the town of Calcutta, Madras, or Bombay, as the case may be:

Government.

"Government" means the Governor General of India in Council, so for as the Act relates to the Presidency of Bengal; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to that presidency:

District judge.

"District Judge" means the judge of a principal civil court of original jurisdiction:

Letters of administration.

"Letters of Administration" shall include any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bona*:

Next-of-kin.

"Next-of-kin" includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased:

Officer.

"Officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army:

Soldier.

"Soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer;

Assets.

"Assets" includes immovable as well as movable property.

Gender. Number.

Words in the masculine gender include the feminine; and words in the singular number include the plural, and *vice versâ*.

PART II.

OF THE OFFICE OF ADMINISTRATOR GENERAL.

Designation of the administrators general in the three presidencies.

IV. In each of the presidencies of Bengal, Madras and Bombay, there shall be an administrator general. The said administrators general shall be called respectively the ad-

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ministrator general of Bengal, the administrator general of Madras, and the administrator general of Bombay.

Appointment, suspension and removal of administrator general.

V. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned respectively; that is to say:—

The administrator general of Bengal, by the Governor General of India in Council; the administrator general of Madras, by the Government of Fort St. George; and the administrator general of Bombay, by the Government of Bombay.

Qualification of future and continuance of existing incumbents.

VI. Any person hereafter appointed to the office of administrator general or officiating administrator general of any of the said presidencies, shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administrator general not to be deemed an officer of high court.

VII. The administrator general shall not be deemed in that capacity to be an officer of any high court.

Probates and letters of administration granted by supreme courts to ecclesiastical registrars, to have same effect as if granted to the administrator general.

VIII. All probates and letters of administration granted by any of the late supreme courts of judicature to the Ecclesiastical Registrar of such court in virtue of his office, shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the administrator general.

No administrator general to be ecclesiastical registrar.

IX. No person now holding the office of administrator general, or hereafter to be appointed to such office in any of the said presidencies, shall hold the office of Ecclesiastical Registrar; nor, without the express sanction of Government, any other office together with that of administrator general: provided that the administrator general of the presidency may be appointed official trustee under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*): provided also, that the administrator general of Bengal may hold the office of receiver of the high court of judicature at Fort William.

Administrator general not to hold any other office without sanction of Government.

Proviso.

Penalty for trading.

X. It is hereby declared to be an offence punishable in manner provided by Section 168 of the Indian Penal Code,

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for any administrator general to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as shall appear to him to be expedient for the due management of the estates which shall come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the administrator general as trustee of such estates.

Exception.

Security to be given by administrator general.

XI. Unless the Governor General of India in Council, or the Government, with the sanction of the Governor General of India in Council, shall otherwise order, every administrator general hereafter to be appointed shall give security to the Secretary of State for India for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of government securities or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds; provided that every administrator general may with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it; and every administrator general may, with the consent of Government, and shall from time to when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security shall relate to the due execution of his office for the time then to come.

Substitution of security or sureties.

No security nor oath to be required by court from administrator general.

XII. No administrator general shall be required by any court to enter into any administration bond, or to give other security to the court, on the grant of any letters of administration to him in virtue of his office. No administrator general shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the administrator general's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification. Whenever

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makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Appointment of officiating administrator general.

XIII. Whenever any person holding the office of administrator general shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as administrator general, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the administrator general by any law now in force or that may hereafter be enacted, and he shall be deemed to be administrator general for the time being under this Act, and shall be liable to give security under Section 11 of this Act in like manner as if he had been appointed administrator general.

PART III.

OF THE RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR GENERAL.

(a) Grants of Letters of Administration and Probate to the Administrator General.

As regards administrator general high court at presidency town to be deemed a court of competent jurisdiction within meaning of Sections 187 and 190 of Indian Succession Act.

XIV. So far as regards the administrator general of any of the presidencies of Bengal, Madras and Bombay, the high court of judicature at the presidency town shall be deemed to be a court of competent jurisdiction within the meaning of Sections 187 and 190 of the Indian Succession Act 1865, wheresoever within the presidency the property to be comprised in the probate or letters of administration may be situate.

Administrator general entitled to letters of administration, unless granted to next of kin of deceased.

Administrator general entitled in preference to creditor, non-universal legatee or friend.

XV. Any letters of administration, or letters *ad colligenda bona*, which shall hereafter be granted by the high court of judicature at any presidency town, shall be granted to the administrator general of the presidency, unless they shall be granted to the next-of-kin of the deceased. The administrator general of the presidency shall be deemed to have a right to letters of administration in preference to that of any person, merely on the ground of his being a

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creditor, a legatee other than a universal legatee, or a friend of the deceased.

When administration of estates of persons other than Hindus, Muhammadans or Buddhists is to be by administrator general.

XVI. If any person, not being a Hindu, Muhammadan or Buddhist, or a person exempted under the Indian Succession Act 1865, Section 332, from the operation of that Act, shall have died, whether within any of the said presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said presidencies, and no person shall, within one month after his death, have applied in such presidency for probate of a will, or for any letters of administration of his estate, the administrator general of the presidency in which such assets shall be, is hereby required, within a reasonable time after he shall have had notice of the death of such person, and of his having left such assets as aforesaid, to take such proceedings as may be necessary to obtain from the high court of judicature at the presidency town, letters of administration to the effects of such person, either generally or with a will annexed, as the case may require. Whenever the administrator general of the presidency shall take proceedings under this section, it shall be sufficient if the petition required by Section 246 of the Indian Succession Act 1865, shall state the time and place of the deceased's death to the best of the petitioner's knowledge or belief, that the deceased left some property within the presidency as hereinbefore defined, and the amount or value of assets which are likely to come into the petitioner's hands.

Upon death of any person leaving assets within local limits, high court may, on application, if assets are in danger, direct administrator general to apply for administration.

XVII. Whenever any person, whether a Hindu, Muhammadan or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the high court of judicature at the presidency town, it shall be lawful for the court, upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next-of-kin or otherwise, or upon the application of a friend of any minor who may be so interested, or upon the application of the administrator general, if the applicant shall satisfy the

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court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted, to make an order, upon such terms as to indemnifying the administrator general against costs and other expenses as to the court shall seem fit, directing the administrator general to apply for letters of administration of the effects of such person. Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased Hindu, Muhammadan or Buddhist, or person exempted as aforesaid, the court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of the assets, and in such case the said court shall make such order as to the costs of the application as it shall think just.

Administration to effects of deceased Hindus, Muhammadans or Buddhists, not to be granted under this section, unless required to protect the assets.

Costs of unnecessary application.

XVIII. Whenever any person, whether a Hindu, Muhammadan or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said high courts, and such court shall be satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether the administrator general is entitled to letters of administration to such deceased person, it shall be lawful for the court to authorize and enjoin the administrator general to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the court, and in default of any such orders or directions, according to the provisions of this Act, so far as the same are applicable to such property; and the administrator general shall be entitled to a commission of one *per centum* upon the amount of all movable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made; and in case letters of administration of any such property shall be afterwards granted to the administrator general, the said commission of one *per centum* shall be deemed a part pay-

Upon death of any person leaving assets within local limits, high court may, if property is in danger, enjoin administrator general to collect and hold the same until right of succession or administration is ascertained.

Rate of commission payable in such case.

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ment of the commission payable to the administrator general under the letters of administration. Any order of court made under the provisions of this section, shall entitle the administrator general to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

Probate to be granted to executor appearing in the course of proceedings taken by administrator general to obtain administration.

XIX. If in the course of proceedings to obtain letters of administration under the provisions of Section 16 or Section 17 of this Act, any executor appointed by a will of the deceased shall appear according to the practice of the court and prove the will and accept the office of executor, or if any person shall appear according to such practice and make out his claim to letters of administration as next-of-kin of the deceased, and shall give such security as shall be required of him by law or by the practice of the court, the court shall grant probate of the will or letters of administration accordingly, and shall award to the administrator general his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

Costs of proceedings taken by the administrator general to be paid out of the estate.

If no executor or next-of-kin appear or give necessary security, letters of administration to be granted to administrator general.

XX. If no person shall appear according to the practice of the court, and entitle himself to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased, or if the person who shall entitle himself to a grant of administration shall neglect to give such security as shall be required of him by law or according to the practice of the court, the court shall grant letters of administration to the administrator general.

Administrator general in certain cases to secure and distribute the estate and effects of soldiers.

XXI. The administrator general shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier, or other person subject to any articles of war, in all cases in which such estate and effects do not exceed on the whole five hundred rupees, charging the estate with a commission of three *per centum* only. It shall not be necessary for the administrator general to take out letters of administration in cases referred to in this section; but he shall have the same powers with regard to

Proviso.

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all such assets as he would have had if he had taken out such letters.

Administrator general not precluded from applying for letters of administration in any case within one month after death of deceased.

XXII. Nothing in this Act is intended to preclude the administrator general from applying to the court for letters of administration in any case, within the period of one month from the death of the deceased.

After revocation, letters of administration granted to administrator general to be deemed as to him to have been voidable only.

XXIII. If any letters of administration which shall be granted to the administrator general under the provisions of this Act, shall be revoked or recalled, the same shall, so far as regards the administrator general and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable; except as to any act done by any such administrator general or other person as aforesaid, after notice of a will or of any other fact which would render such letters of administration void: provided that no notice of a will or of any other fact, which would render any such letters of administration void, shall affect the administrator general or any person acting under his authority in pursuance of such letters of administration, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters of administration to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

Exception.

Proviso.

What payments made or acts done by administrator general prior to revocation of administration upon production of a will shall be deemed valid.

XXIV. If any letters of administration which shall be granted uuder this Act shall be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the administrator general in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation.

In what cases court may recall administrator general's administration and grant probate, &c., to executor or next-of-kin.

XXV. If an executor or next-of-kin of the deceased, who shall not have been personally served with a citation or had notice thereof in time to appear in pursuance thereof, shall establish to the satisfaction of the court a claim to probate of a will or to letters of administration in preference to the administrator general, any letters of administration which shall be granted by virtue of this Act to the administrator

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general may be recalled and revoked, and probate may be granted to such executor, or letters of administration granted to such other person aforesaid: provided that no letters of administration which shall be granted to the administrator general shall be revoked or recalled for the cause aforesaid, except in cases in which a will or codicil of the deceased shall be proved in the presidency, unless the application for that purpose shall be made within six months after the grant to the administrator general, and the court shall be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application shall be made.

Unless a will is proved application to revoke such administration must be made within six months and without needless delay.

Costs of obtaining administration, commission, &c., may, on revocation, be ordered by court to be paid to the administrator general out of the assets.

XXVI. If any letters of administration which shall be granted to the administrator general in pursuance of this Act shall be revoked, the court may order the costs of obtaining such letters of administration, and the whole or any part of any commission which would otherwise have been payable under this Act, together with the costs of the administrator general in any proceedings taken to obtain such revocation, to be paid to or retained by the administrator general out of any assets belonging to the estate. Provided that in any such case, when the deceased has left a will appointing an executor, and probate of the will has been granted by any court in the presidency to such executor within three months after the death, or when the widow or next-of-kin has within one month if resident within the presidency, or within three months if resident beyond the presidency, obtained from any such court letters of administration to the estate and effects of the deceased, then and in either of such cases the administrator general shall (without prejudice to the provisions contained in Sections 17 and 18 of this Act) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the court by which probate or administration shall have been granted as last aforesaid.

Exclusion of creditors who have not proved, from assets with which a dividend is made.

XXVII. Whenever the administrator general shall declare a dividend among such creditors of the deceased as have proved their debts, and shall notify the payment of

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such dividend by advertisement in the official gazette, no creditor of the deceased who shall not previously to such declaration and advertisement have proved his debt, shall be entitled to participate as such in the assets wherewith such dividend shall be made. Any payment or delivery of assets to any legatee or to any person entitled in distribution, which shall be made by an administrator general after the expiration of one year from the grant of the letters of administration under which such payment or delivery shall be made, shall be allowed to the administrator general as against all creditors and other claimants against the estate, of whose debts or claims he shall not have had notice before making such payment or delivery: provided that nothing herein contained shall exempt the person to whom such payment or delivery shall be made, from any liability to refund to which he would otherwise be liable: and provided also, that no notice of any debt or claim shall effect the administrator general, unless proceedings to enforce the debt or claim be commenced within one month after the giving of such notice, and be prosecuted without unreasonable delay.

After one year from grant of administration, distribution of assets by administrator general to be allowed against all claims of which he had no notice.

Person receiving payments liable to refund.

What to be notice of debt or claim.

XXVIII. All letters of administration which shall be granted to any administrator general in virtue of his office shall be granted to him by his name of office, and all letters of administration heretofore granted to the ecclesiastical registrar or administrator general officially, or which shall be granted to any administrator general in virtue of his office, shall authorize the administrator general for the time being of the same presidency to act as administrator of the estate to which such letters of administration shall relate.

Letters of administration to be granted to administrator general in virtue of his office.

Authority given by such letters.

XXIX. Every probate which shall be granted to any administrator general of a will wherein he shall be named as executor by virtue of his office, shall be granted to him by his name of office, and shall authorize the administrator general for the time being of the same presidency to act as executor of the estate to which such probate shall relate.

Grant of probate to administrator general named as executor by virtue of his office.

XXX. It shall be lawful for any private executor or administrator, with the previous consent of the administrator general of the presidency in which the property comprised

Transfer by private executor or administrator of interest under probate or letters of administration.

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in the probate or letters of administration is situate, by an instrument in writing under his hand, bearing a stamp of ten rupees and notified in the local gazette, to transfer all estates, effects and interests vested in him by virtue of such probate or letters to the administrator general by his name of office; and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer; and the administrator general for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid. Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

Vesting of estates, &c., in successor of administrator general.

XXXI. All estates, effects and interests which, at the time of the death, resignation or removal from office of any administrator general, shall be vested in him by virtue of such letters of administration, probates or transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto. All books, papers and documents kept by such administrator general by virtue of his office or as such executor or transferee as aforesaid, shall be transferred to and vested in his successor in office.

(b) Suits by and against the Administrator General.

Administrator general to sue and be sued in his representative capacity by his name of office.

XXXII. All suits or other proceedings which shall be commenced by or against any administrator general in his representative character, may be brought by or against him by his name of office, and no suit or other proceedings already commenced or which shall be commenced by or against any person as administrator general, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such administrator general, but the same may, by order

Suit not to abate by death, &c.

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of the court, and upon such terms as to the service of notices or otherwise as the court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred: provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

Creditors' suits against administrator general.

XXXIII. If any suit shall be brought by a creditor against any administrator general in his representative character, the plaintiff shall be liable to pay the costs of the suit, and shall not be entitled to have the decree (if any) in such suit enforced, unless upon proof by affidavit or otherwise that not less than one calendar month previous to the institution of the suit he had applied in writing to the administrator general, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case, the administrator general was reasonably entitled to require, and that the administrator general had refused or neglected to register the claim according to the practice of his office. If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased *pari passu* with the other creditors.

(c) *Grant of Certificates by the Administrator General.*

In what case administrator general may grant certificate.

XXXIV. Whenever any person, not being a Hindu, Muhammadam or Buddhist, or exempted under the Indian Succession Act, 1865, Section 332, from the operation of that Act, shall have died, whether within any of the said presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left movable assets within any of the said presidencies, and the administrator general of such presidency shall be satisfied that such assets do not exceed in the whole one thousand rupees in value, he may, after the lapse of one month from the death, if he shall think fit, or before the lapse of the said month if he shall be requested so to do by writing under the hand of the executor or the widow or other person en-

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titled to administer the effects of the deceased, grant to any person claiming otherwise than as a creditor to be entitled to a share of such effects, certificates under his hand entitling the claimant to receive the sums or securities for money therein severally mentioned, belonging to the effects of the deceased, to the value of any sum not exceeding in the whole one thousand rupees, provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government savings' bank.

No certificate to be granted where probate or administration taken out, or in respect of money in Government savings' bank.

Grant of certificate to creditors.

XXXV. If in cases falling within Section 34 of this Act, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased shall, within three months, obtain a certificate from the administrator general under the same section, or letters of administration to the estate and effects of the deceased, the administrator general may administer the estate without letters of administration in the same manner as if such letters of administration had been granted to him; and if he shall neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased, and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate: provided that the administrator general may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Proviso.

Administrator general not bound to grant certificate unless satisfied of claimant's title, &c.

XXXVI. The administrator general shall not be bound to grant any such certificate, unless he shall be satisfied of the title of the claimant and of the value of the effects of the deceased, either by the oath or solemn affirmation of the claimant (which oath or affirmation the administrator general is hereby authorized to administer or take), or by such other evidence as he shall require.

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XXXVII. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same: but nothing in this Act shall preclude any executor or administrator of the deceased from recovering from the person receiving the same, the amount remaining in his hands, after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

Right of executor or administrator against certificate-holder.

Right of creditor against assets in hands of certificate-holder.

XXXVIII. The administrator general shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he shall grant any such certificate, but he may do so if he shall discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Administrator general not bound to take out administration on account of effects in respect of which he has granted certificate.

XXXIX. For every such certificate the administrator general shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Fee for certificate.

(*d*) *Expenses of the Administrator General's Establishment.*

XL. The administrator general shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office shall be subject, except those for which express provision is made by this Act.

Administrator general to defray expenses of establishment, and all other charges not expressly provided for.

(*e*) *Accounts and Schedules.*

XLI. The administrator general of each of the said presidencies shall enter into books to be kept by him for that purpose, separate and distinct accounts of each estate, and

Administrator general to keep a separate account for each estate, to be open t

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inspection on payment of fee.

of all such sums of money, bonds and other securities for money, goods, effects and things as shall come to his hands, or to the hands of any person employed by him or in trust for him under this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively. Such books shall be kept in the administrator general's office, and shall be open for the inspection of all such persons, practitioners in the said courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee as hath been or shall be from time to time fixed by the Government and published in the official gazette of the presidency to which the same may relate.

Administrator general to furnish half-yearly schedules.

XLII. The administrator general of each of the said presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government shall, by any rules or orders to be published as aforesaid, direct, exhibit, and deliver, in the high court at Calcutta, Madras or Bombay, as the case may be, a true schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule, and a true list of all bonds or other securities received on account of each of the said estates during the same period; and also a true schedule of all administrations whereof the final balances shall have been paid over to the persons entitled to the same during the same period, specifying the amount of such balances and the persons to whom paid. Such schedules shall be filed of record in such high court, and shall, within fourteen days afterwards, be published in the official gazette of the presidency by the said administrator general; and copies thereof in triplicate shall be delivered by such administrator general to the Government, and shall be sent by such government to the Secretary of State for India, in order that such Secretary may, if he think fit so to do, order

Schedules to be filed and published.

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the same to be deposited at the India Office for public inspection, and may cause notices to be published in the *London Gazette* and other leading newspapers, that such schedules are open to inspection there, or may make such other orders respecting the same as he may think fit.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

Government to appoint auditors.

XLIII. The Government shall from time to time appoint auditors to examine the accounts of the administrator general at the times of the delivery of the said schedules, and also at any other time when the Government shall think fit.

Auditors to examine schedule, and report to Government.

XLIV. The auditors shall examine the schedules and accounts, and report to the Government whether they contain a full and true account of every thing which ought to be inserted therein, and whether the books which by this Act are, or which by any such general rules and orders as hereinafter mentioned shall be directed to be kept up by the administrator general, have been duly and regularly kept, and whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditors to have power to summon witnesses and to call for books, &c.

XLV. Every auditor shall have power to summon as well the administrator general as any other person whose presence he may think necessary, to attend him from time to time; and to examine the administrator general or other person if he shall think fit, on oath or solemn affirmation to be by him administered; and to call for all books, papers, vouchers and documents, which shall appear to him to be necessary for the purposes of the said reference. If the administrator general or other person when summoned shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher or document so required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditors shall certify such neglect or refusal in writing to the high court at the presi-

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Penalty for non-attendance.

dency town; and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said high court.

Costs of preparing schedules, &c., how to be paid.

XLVI. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts shall relate. Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the administrator general.

Auditors to report specially to Government if accounts appear not correct.

XLVII. If upon any such reference and examination the auditors shall see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained, or that the assets have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or that the administrator general has failed to comply with the provisions and direction of this Act or of any such rules and orders, they shall report accordingly to the Government.

Proceedings upon such report.

XLVIII. The Government may refer every such report as last aforesaid to the consideration of the advocate general for the presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his executor or administrator in the high court in the presidency town, by petition for an account, or to compel obedience to this Act, or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter; and the said advocate general shall have power to exhibit interrogatories to the said administrator general, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure for his examination upon the said interrogatories. The court shall have power upon any such petition to compel the attendance in court of the defendant and any witnesses who

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may be thought necessary; and to examine them orally or otherwise as the said court shall think fit, and to make and enforce such order or orders as the court shall think just.

Costs of reference &c., how to be defrayed.

XLIX. The costs, including those of the advocate general and of the reference to him, if the same shall be directed by the court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said court shall direct; and whenever any costs shall be recovered from the defendant, the same shall be repaid to the estates by which they shall have been in the first instance contributed, and the court may, if it shall think fit, order the defendant to receive his costs out of the said estates.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR GENERAL.

Commission to be received by administrators general.

L. The administrator general of each of the said presidencies, under any letters of administration which shall be granted to him in his official character, or under any probate which shall be granted to him of a will wherein he shall be named as executor by virtue of his office; or under any probates or letters of administration which are or shall be vested in him by Section 8 or Section 30 of this Act, shall be entitled to receive a commission at the the following rates respectively, viz. :—

The administrator general of Bengal at the rate of three *per centum*, and the administrators general of Madras and Bombay respectively at the rate of five *per centum* upon the amount or value of the assets which they shall respectively collect and distribute in due course of administration.

Section 50 not to apply to property of officers and soldiers dying on service, which shall come to hands of administrator general.

LI. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service shall come to the hands of the administrator general of any of the said presidencies, under the ninth or the twelfth section of the statute called "The Regimental Debts' Act, 1863;" and such administrator general shall not be entitled to take and it shall not be lawful for him to take, a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of

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Administrator general entitled to a commission of only three per cent. on gross amount of such property.

the Administrator General's Act 1865, if preferential charges as defined by the fourth section of the said statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

What expenses, &c., commission is to cover.

LII. The administrator general shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but save as aforesaid, the commission to which the administrator general of each of the said three presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration. It is

How payable.

therefore enacted that one-half of such commission shall be payable to and retained by such administrator general upon the collection of the assets, and the other half thereof shall be payable to the administrator general who shall distribute any assets in the due course of administration, and may be

Commission retained to be deemed a distribution.

retained by him upon such distribution. The amount of the commission lawfully retained by an administrator general upon the distribution of assets, shall be deemed a distribution in the due course of administration within the meaning of this Act.

Commission of the administrator general of Bengal may be raised and again reduced.

LIII. The Governor General of India in Council may from time to time order the rate of commission hereinbefore authorized to be received by the administrator general of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he shall collect and distribute in due course of administration, and again to be reduced. The Governments of the presidencies

Commission of the administrators general of Madras and Bombay may be reduced and again raised.

of Fort St. George and Bombay respectively may with the sanction of the Governor General of India in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the adminstrators general of Madras and Bombay respectively to be reduced and again to be raised: provided that the commission so to be received

Proviso.

shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of ad-

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ministrator general of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission or agency not to be charged by executor or administrator other than the administrator general.

LIV. No person other than the administrator general acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which have been granted by the supreme court or high court of judicature at Fort William in Bengal since the passing of Act No. VII. of 1849 (*for the appointment of an Administrator General in Bengal*), or by either of the supreme or high courts of judicature at Madras and Bombay since the passing of Act No. II. of 1850 (*to amend and extend to Madras and Bombay Act No. VII. of* 1849), or which have been or shall be granted by any court of competent jurisdiction within the meaning of Sections 187 and 190 of the Indian Succession Act 1865; but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

Bequest in favour of executors not affected.

PART VI.

MISCELLANEOUS.

Government may make and alter rules and orders consistent with this Act—

For custody of assets.

For remittance of money.

For guidance of administrator general.

LV. The Government shall have power from time to time to make and alter any general rules and orders consistent with the provisions of this Act for the safe custody of the assets and securities which shall come to the hands or possession of the administrator general, and for the remittance to the India Office of all sums of money which shall be payable or belong to persons resident in Europe, or in other cases where such remittances shall be required, and generally for the guidance and government of the administrator general in the discharge of his duties; and may by such rules and orders, amongst other things direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the administrator general, and in what form the same shall be kept, and what entries the same shall contain,

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and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such administrator general shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made. Unless any such rules shall be made and published, the rules now in force in each of the said presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published under this Act.

Proviso as to rules now in force.

Publication of orders, &c.

LVI. Such orders shall be published in the *Gazette of India*, the *Fort St. George Gazette*, or the Bombay *Government Gazette*, as the case may be, and it shall be the duty of the several administrators general to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Orders of the court to have same effect, and to be executed in same manner, as a decree.

LVII. Any order which shall be made under this Act by any court shall have the same effect and be executed in the same manner as a decree.

Penalty for false evidence.

LVIII. Whoever, having been sworn or having taken a solemn affirmation under this Act, shall upon any examination authorized by this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets unclaimed for fifteen years to be transferred to Government.

LIX. All assets in the official charge of the administrator general of any of the said presidencies, and which now appear or shall hereafter appear from the official books and accounts of the Ecclesiastical Registrar and of the administrator general of any of those presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the controller general of accounts, or to the accountant general to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government

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of India for the general purpose of government; and the receipt of the said controller general or accountant general, as the case may be, shall be a full indemnity and discharge to the said administrator general for any such transfer or payment: provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit already instituted or which shall be hereafter instituted in respect thereof. Proviso.

Mode of proceeding by claimant to recover principal money so transferred.

LX. If any claim shall be hereafter made to any part of the securities, monies or proceeds which shall be carried to the account or credit of the Government of India under the provisions of this Act, and if such claim shall be established to the satisfaction of the controller general or the accountant general to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to the credit and account of the said Government of India, or so much thereof as shall appear to be due to the claimant. If the claim shall not be established to the satisfaction of the said controller general or accountant general, as the case may be, the claimant may apply by petition to the high court at the presidency town against the Secretary of State for India, and after taking evidence either orally or on affidavit in a summary way as the said court shall think fit, the said court shall make such order on the petition for the payment of such portion of the said principal sum as justice shall require, and such order shall be binding on all parties to the suit.

District Judge in certain cases to take charge of property of deceased persons, and to report to administrator general.

LXI. Whenever any person, other than a Hindu, Muhammadan or Buddhist, or a person exempted under the Indian Succession Act 1865, Section 332, from the operation of that Act, shall die leaving assets within the limits of the jurisdiction of a district judge, it shall be the duty of the district judge to report the circumstance without delay to the administrator general of the presidency, retaining the property under his charge, or appointing an officer under the provisions of the Indian Succession Act, 1865, Section 239, to take and keep possession of the same until the administrator general shall have obtained letters of adminis-

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tration, or until some other person shall have obtained such letters or a certificate from the administrator general under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

Act not to require administration of estates of soldiers, unless administrator general authorized by military secretary or committee of adjustment.

LXII. Nothing in this Act is intended to require the administrator general to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any articles of war, unless when the administrator general shall be duly authorized or required so to do by the Military Secretary to Government, or by a committee of adjustment or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts; nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts, and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any articles of war.

Indian Succession Act and Indian Companies' Act not to affect administrator general.

LXIII. Nothing contained in the Indian Succession Act, 1865, or the Indian Companies' Act, 1866, shall be taken to supersede or affect the rights, duties and privileges of the administrators general and officiating administrators general of Bengal, Madras and Bombay respectively.

Power to appoint a deputy administrator general for the North-Western Provinces and the Punjab, Oudh and the Central Provinces.

LXIV. It shall be lawful for the Governor General of India in Council to appoint a deputy administrator general for all or any of the territories which are or shall for the time being be respectively under the governments of the said Lieutenant Governors of the North-Western Provinces and the Punjab, and under the administrations of the Chief Commissioners of Oudh and the Central Provinces; and the provisions contained in this Act as to the administrator general of Bengal, shall apply to any deputy administrator general so appointed, save that in such case this Act shall be constructed in the North-Western Provinces, Oudh and Central Provinces as if the high court of judicature for the North-Western Provinces of the presidency of Fort William

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in Bengal and in the Punjab, as if the chief court of the Punjab were substituted for the high court of judicature at Fort William.

SCHEDULE. Repealed by Act XIV, of 1870.

A. D. 1868. ACT I.

AN ACT *for shortening the language used in Acts of the Governor General of India in Council and for other purposes.*

Passed on the 3rd January 1868.

WHEREAS it is expedient to shorten the language used in acts made by the Governor General of India in Council, and to make certain provisions relating to such Acts; it is hereby enacted as follows:— Preamble.

I. This Act may be cited as "The General Clauses' Act 1868." Short title.

II. In this Act and in all Acts made by the Governor General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,— Interpretation-clause.

(1) Words importing the masculine gender shall be taken to include females; Gender.

(2) Words in the singular shall include the plural, and *vice versa*; Number.

(3) "Person" shall include any company or association, or body of individuals whether incorporated or not; Person.

(4) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar; Year and month.

(5) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth; Immovable property.

(6) "Movable property" shall mean property of every description, except immovable property; Movable property.

(7) "Her Majesty" shall include her heirs and successors to the Crown; Her Majesty.

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British India. (8) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 and 22 Vic., cap. 106 *(An Act for the better Government of India)*, other than the Settlement of Prince of Wales' Island, Singapore and Malacca;

Government of India. (9) "Government of India" shall denote the Governor General of India in Council, or, during the absence of the Governor General of India from his Council, the President in Council, or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

Local Government. (10) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a chief commissioner;

High Court. (11) "High court" shall mean the highest civil court of appeal in such part;

District Judge. (12) "District Judge" shall mean the judge of a principal civil court of original jurisdiction; but shall not include a high court in the exercise of its ordinary or extraordinary original civil jurisdiction;

Magistrate. (13) "Magistrate" shall include all persons exercising all or any of the powers of a magistrate under the Code of Criminal Procedure;

Barrister. (14) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

Section. (15) "Section" shall denote a section of the Act in which the word occurs;

Will. (16) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

Oath, swear, and affidavit. (17.) "Oath," "swear" and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

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(18) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code; Imprisonment.

(19) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father. Son. Father.

III. In all Acts made by the Governor General of India in Council after this Act shall have come into operation:—

(1) For the purpose of reviving, either wholly or partially, a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose; Revival of repealed enactments.

(2) For the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;" Commencement of time.

(3) For the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to;" Termination of time.

(4) For the purpose of expressing that a law relative to the chief or superior of an office, shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior; Official chiefs and subordinates.

(5) For the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and Successors.

(7) For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed. Substitution of functionaries.

IV. Whenever by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity. Duty may be taken *pro rata*.

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Recovery of fines.

V. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section sixty-one of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

Matters done under an enactment before its repeal to be unaffected.

VI. The repeal of any Statute, Act or Regulation, shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

VII & VIII. Repealed by Act I. of 1872.

A. D. 1868. ACT XVIII.

AN ACT *for investing the Commissioner and Assistant Commissioner of the Neilgherry Hills with the powers of a Court of Small Causes.*

Passed on the 15th July 1868.

Preamble.

WHEREAS it is expedient that the Commissioner and the Assistant Commissioner of the Neilgherry Hills appointed under the provisions of Madras Act No. I. of 1868 (*for the appointment of a Commissioner for the administration of Civil and Criminal justice and for the superintendence and collection of the revenues on the Neilgherry Hills*) should be invested with the powers of a Court of Small Causes constituted under the provisions of Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*); it is hereby enacted as follows:

Power to invest commissioner and assistant commissioner of Neilgherry Hills with Small Cause jurisdiction.

I. The Governor of Fort St. George in Council may, by notification in the local official gazette, authorize the said commissioner and assistant commissioner to exercise jointly or separately within the territorial limits of the jurisdiction of the said commissioner, the powers of a judge of a court of small causes constituted under provisions of the said Act No. XI of 1865, but subject to the rules hereinafter referred to.

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II. The said Governor in Council may frame rules providing for the distribution of business between the said commissioner and assistant commissioner in their capacity of judges of a court of small causes, and generally for defining their duties and relative positions when acting in such capacity, and may also from time to time alter and add to the rules so made; provided that such rules, alterations and additions are consistent with the provisions of this Act. Power to make rules.

III. Whenever there is a difference of opinion between the said commissioner and assistant commissioner sitting together as aforesaid upon any question of fact, law or practice, or upon any usage having the force of law, the opinion of the commissioner shall prevail. Opinion of commissioner to prevail in case of difference.

IV. Suits and proceedings pending before the civil judge at Cotacamund in his capacity of a judge of a court of small causes, when this Act comes into operation, shall be heard and determined by the said commissioner or assistant commissioner in accordance with the rules to be made under Section 2. Pending suits.

V. Repealed by Act XIV. of 1870.

A. D. 1868. ACT XXI.

AN ACT *to appoint a Receiver of the Property of the late Nawab of the Carnatic.*

Passed on the 10*th September* 1868.

WHEREAS certain property belonging to the estate of the late Nawab of the Carnatic has lately been discovered both in the District of Madras and in the territories of his highness the Nizam, and it is expedient to appoint a receiver to collect and administer such property and any other property belonging to the said estate which may hereafter be discovered, or has not hitherto been administered; it is hereby enacted as follows:— Preamble.

I. The Governor of Fort St. George in Council shall appoint such person as he may think fit to act under the orders Appointment of receiver of Carnatic property.

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of the high court of judicature at Madras in the administration of the property left by the late Nawab of the Carnatic, and not hitherto collected or administered.

The person so appointed shall have power to collect and take possession of all such property: he shall deal with the same according to the provisions herein contained: he shall give such security (if any) for the due execution of his office as the said Governor in Council may require; and he shall be called "the Receiver of the Carnatic property."

Remuneration of Receiver.

II. The receiver of the Carnatic property shall be entitled to such commission not exceeding five per centum upon the amount or value of the property collected and distributed under the provisions of this Act as the said Governor in Council shall prescribe. Such commission shall be charged to the estate of the said Nawab.

Suspension or removal of receivor.

III. The said Governor in Council may suspend or remove any person appointed such receiver as aforesaid, and may also from time to time fill up any vacancy in such office occasioned by death, resignation, suspension or removal.

Receiver to represent Nawab's estate in all proceedings.

IV. The receiver shall represent the estate of the said Nawab in all proceedings relating thereto: he shall do all acts in performance of his duties by his name of office; and in all legal proceedings he shall be designated by such name.

No proceedings to which the receiver may be a party shall abate by reason of the death, resignation, suspension or removal from office of any such receiver, but the same shall be continued by his successor as if no such death, resignation, suspension or removal had occurred.

Receiver to collect Nawab's property.

V. The receiver shall have power to collect and take possession of all property, movable or immovable, and whether of the nature of state or public property or not, to which the said Nawab at the time of his death was entitled, and if necessary to sue for and recover the same property, and to realize its value by sale or otherwise.

Conveyance on sale by receiver of immovable property.

VI. Whenever the said receiver by the order or with the sanction of the said high court sells any of the said immovable property, he shall execute a conveyance thereof to the purchaser.

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Every such conveyance shall be valid as against the heirs of the said Nawab, and all persons claiming under them, and also against all persons claiming under the said Nawab by virtue of any conveyance or instrument declared by the said court or by the late supreme court of judicature at Madras, to be void as against the creditors of the said Nawab, or by virtue of any security the benefit of which was barred under the provisions of Act No. XXX. of 1858 (*to provide for the administration of the estate and for the payment of the debts of the late Nuwab of the Carnatic.*)

In case of suit for administration, receiver to be subject to orders of High Court.

VII. Upon any suit being instituted for the administration of the said estate, the said receiver shall be deemed subject to the orders of the said high court, and, so far as such orders shall not extend to the general practice of such court in the same manner as any other receiver specially appointed thereby except that the court shall not require him to give security.

Commencement of Act.

VIII. This Act shall be deemed to have come into operation on the second day of April 1868, and any person holding the office of Receiver of the Carnatic property immediately before that day shall be deemed to have been appointed on that day under this Act.

A. D. 1869. ACT IV.

AN ACT *to amend the law relating to Divorce and Matrimonial Causes in India.*

Passed on the 26th February 1869.

Preamble.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain courts jurisdiction in matters matrimonial; it is hereby enacted as follows :—

I.—PRELIMINARY.

Short title. Commencement of Act

I. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869.

Extent of Act.

II. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the

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dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Extent of power to grant relief generally.

Nothing hereinafter contained shall authorize any court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition;

And to make decrees of dissolution.

or to make decrees of dissolution of marriage except in the following cases:—(*a*) where the marriage shall have been solemnized in India: or (*b*) where the adultery, rape or unnatural crime complained of shall have been committed in India; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion;

Or of nullity.

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India.

Interpretation-clause

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

High Court.

(1) "High Court" means in any Regulation Province the court there established under the Act of the 24th and 25th of Victoria, Chapter 140, in the territories for the time being subject to the government of the Lieutenant Governor of the Panjab, the Chief Court of the Panjab,

in British Burmah, the high court of judicature at Fort William in Bengal,

and in any other Non-Regulation Province, and in any place in the dominions of the Princes and States of India in alliance with Her Majesty, the high court or chief court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty:

In the case of any petition under this Act, 'high court' is that one of the aforesaid courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

District Judge.

(2). "District Judge" means, in the Regulation Provinces, a judge of a principal civil court of original jurisdiction,

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in the Non-Regulation Provinces, other than British Burmah and Sind, a commissioner of a division,

in Pegu, the recorder at Rangoon,

in Arakan, the recorder at Rangoon until a recorder's court is established at Akyab, and thenceforward the recorder at Akyab,

in the Tenasserim Provinces, the recorder at Maulmain,

in Sind, the judicial commissioner in that province,

and in any place in the dominions of the princes and states aforesaid, such officer as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the high court in the exercise of its original jurisdiction under this Act:

District Court.

(3.) "District Court" means, in the case of any petition under this Act, the court of the district judge within the local limits of whose ordinary jurisdiction or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

Court.

(4) "Court" means the high court or the district court, as the case may be:

Minor children.

(5) "Minor children" means, in the case of sons of native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years: in other cases it means unmarried children who have not completed the age of eighteen years:

Incestuous adultery.

(6) "Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity:

Bigamy with adultery.

(7) "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed:

Marriage with another woman.

(8) "Marriage with another woman" means marriage of any person, being married, to any other person, during the

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life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere:

Desertion.

(9) "Desertion" implies an abandonment against the wish of the person charging it; and

Property.

(10) "Property" includes in the case of a wife any property to which she is entitled for an estate in remainder or reversion or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

Matrimonial jurisdiction of high courts to be exercised subject to this Act.

IV. The jurisdiction now exercised by the high courts in respect of divorce *a mensa et toro*, and in all other causes, suits and matters matrimonial, shall be exercised by such courts and by the district courts subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage-licences, which may be granted as if this Act had not been passed.

Exception.

Enforcement of decrees or orders made heretofore by any supreme or high court.

V. Any decree or order of the late supreme court of judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said high courts sitting in the exercise of their matrimonial jurisdiction respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said high courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the court so enforcing or dealing with the same.

Pending suits.

VI. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any high court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English divorce court.

VII. Subject to the provisions contained in this Act, the high courts and district courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said courts, are as nearly as

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may be conformable to the principles and rules on which the court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

Extraordinary jurisdiction of High Court.

VIII. The high court may, whenever it thinks fit remove and try and determine as a court of original jurisdiction, any suit or proceeding instituted under this Act in the court of any district judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The high court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the court of any other such district judge.

Reference to high courts.

IX. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a district court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the court's own opinion thereon, to the decision of the high court.

If the question has arisen previous to or in the hearing, the district court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the high court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the high court upon such reference.

III.—Dissolution of Marriage.

When husband may petition for dissolution.

X. Any husband may present a petition to the district court or to the high court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for a dissolution.

Any wife may present a petition to the district court or to the high court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the

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profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Adulterer to be a co-respondent.

XI. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the court:—

(1). That the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed.

(2). That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it.

(3). That the alleged adulterer is dead.

Court to be satisfied of absence of collusion.

XII. Upon any such petition for the dissolution of a marriage, the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any countercharge which may be made against the petitioner.

Dismissal of petition.

XIII. In case the court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

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or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the court shall dismiss the petition.

When a petition is dismissed by a district court under this section, the petitioner may, nevertheless, present a similar petition to the high court.

Power to court to pronounce decree for dissolving marriage.

XIV. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

Provided that the court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

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Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case of opposition on certain grounds.

XV. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for dissolution to be *nisi*.

XVI. Every decree for a dissolution of marriage made by a high court not being a confirmation of a decree of a district court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the high court, by general or special order from time to time directs.

Collusion.

During that period any person shall be at liberty, in such manner as the high court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the court.

On cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The high court may order the costs of counsel and witnesses and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the high court may dismiss the suit.

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XVII. Every decree for a dissolution of marriage made by a district judge shall be subject to confirmation by the high court. Confirmation of decree for dissolution by district judge.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of judges of the high court is three or upwards) by a court composed of three such judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the judges of the high court is two) by a court composed of such two judges, and in case of difference the opinion of the senior judge shall prevail.

The high court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the high court by the district judge, and the high court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the high court by general or special order from time to time directs.

During the progress of the suit in the court of the district judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the high court by general or special order from time to time directs, to apply to the high court to remove the suit under section eight, and the high court shall thereupon, if it think fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section sixteen shall apply to every suit so removed: or it may direct the district judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

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IV.—Nullity of Marriage.

Petition for decree of nullity.

XVIII. Any husband or wife may present a petition to the district court or to the high court, praying that his or her marriage may be declared null and void.

Grounds of decree.

XIX. Such decree may be made on any of the following grounds:—

(1). That the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2). That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3). That either party was a lunatic or idiot at the time of the marriage;

(4). That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the high court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation of district judge's decree.

XX. Every decree of nullity of marriage made by a district judge shall be subject to confirmation by the high court, and the provisions of section seventeen, clauses one, two, three and four, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

XXI. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.—Judicial Separation.

No decree for divorce *a mensâ et toro* to be made.

XXII. No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a de-

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cree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Decree of judicial separation obtainable by husband or wife.

XXIII. Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the district court or the high court; and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Application for separation made by petition.

XXIV. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Separated wife to be deemed a spinster with respect to after-acquired property.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead;

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

XXV. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Separated wife to be deemed a spinster for purposes of contract and suing.

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use.

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Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

Decree of separation obtained during the absence of husband or wife may be reversed.

XXVI. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The court may, on being satisfied of the truth of the allegation of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection Orders.

Deserted wife may apply to the court for protection.

XXVII. Any wife to whom the fourth section of the Indian Succession Act 1865, does not apply, may, when deserted by her husband, present a petition to the district court or the high court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

XXVIII. The court, if satisfied of the fact of such desertion, and that the same was without any reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from the husband and all creditors and persons claiming under him. Every such order shall state the time of which the desertion com-

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menced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

XXIX. The husband, or any creditor of, or person claiming under him, may apply to the court by which such order was made for the discharge or variation thereof, and the court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing his wife's property after notice of order.

XXX. If the husband, or any creditor of, or person claiming under the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

XXXI. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—Restitution of Conjugal Rights.

Petition for restitution of conjugal rights.

XXXII. When either the husband or the wife has, without any reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the district court or the high court, for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Answer to petition.

XXXIII. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—Damages and Costs.

Husband may claim damages from adulterer.

XXXIV. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the district court or the high court limited

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to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said court, although the respondents or either of them may not appear.

After the decision has been given, the court may direct in what manner such damages shall be paid or applied.

Power to order adulterer to pay costs.

XXXV. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) if the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under section seventeen, the court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

IX.—Alimony.

Alimony *pen tende lite*.

XXXVI. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the court, on being satisfied of the truth of the statements

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therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just.

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to order permanent alimony.

XXXVII. The high court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the district judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to the executed by all necessary parties.

Power to order monthly or weekly payments.

In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court seems fit.

Court may direct payment of alimony to wife or to her trustee.

XXXVIII. In all cases in which the court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any

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terms or restrictions which to the court seem expedient, and may from time to time appoint a new trustee, if it appears to the court expedient so to do.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

XXXIX. Whenever the court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the court that the wife is entitled to any property, the court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.

The court may direct that the whole or any part of the damages recovered under section thirty-four shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

XL. The high court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the district court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the court seems fit:

Provided that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI.—Custody of Children.

Power to make orders as to custody of

XLI. In any suit for obtaining a judicial separation the court may, from time to time, before making its decree, make

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such interim orders, and may make such provision in the decree, as it deems proper, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said court. children in suit for separation.

XLII. The court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending. Power to make such orders after decree.

XLIII. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a high court, the court may, from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, Power to make orders as to custody of children in suits for dissolution or nullity.

and in any such suit instituted in a district court, the court may, from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation,

as the high court or district court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the court.

XLIV. The high court after a decree absolute for dissolution of marriage or a decree of nullity of marriage, Power to make such orders after decree or confirmation.

and the district court after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with re-

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spect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—Procedure.

Code of Civil Procedure to apply.

XLV. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

Forms of petitions and statements.

XLVI. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on petition.

XLVII. Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation,* shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Petition to state absence of collusion.

Statements to be verified.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on behalf of lunatics.

XLVIII. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits by minors.

XLIX. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking† shall be filed in court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

*See Act VII. of 1870. † See Act VII. of 1870.

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Service of petition.

L. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the high court by general or special order from time to time directs:

Provided that the court may dispense with such service altogether in case it seems necessary or expedient so to do.

Mode of taking evidence.

LI. The witnesses in all proceedings before the court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

Competence of husband and wife to give evidence as to cruelty or desertion.

LII. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Power to close door.

LIII. The whole or any part of any proceeding under this Act may be heard, if the court thinks fit, with closed doors.

Power to adjourn.

LIV. The court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Enforcement of, and appeals from, orders and decrees.

LV. All decrees and orders made by the court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force:

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Provided that there shall be no appeal from a decree of a district judge for dissolution of marriage or of nullity of marriage: nor from the order of the high court confirming or refusing to confirm such decree:

No appeal as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal to Queen in Council.

LVI. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a high court made on appeal or otherwise,

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by judges of a high court or of any division court from which an appeal shall not lie to the high court,

when the high court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Remarriage.

Liberty to parties to marry again.

LVII. When six months after the date of an order of a high court confirming the decree for a dissolution of marriage made by a district judge have expired,

or when six months after the date of any decree of a high court dissolving a marriage have expired, and no appeal has been presented against such decree to the high court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order of decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

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LVIII. No clergyman in holy orders of the United Church of England and Ireland shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

English clergymen not compelled to solemnize marriages of persons divorced for adultery.

When any minister of any church or chapel of the said United Church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in holy orders of the said church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage-service in such church or chapel.

English minister refusing to perform ceremony to permit use of his church.

XIV.—Miscellaneous.

LX. Every decree for judicial separation or order to protect property, obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

Decree for separation or protection-order to be valid as to persons dealing with wife before reversal.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

All persons who in reliance on any such decree or order may make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation

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of the decree or order, or of the cessation or discontinuance of the separation.

Bar of suit for criminal conversation.

LXI. After this Act comes into operation, no person competent to present a petition under sections two and ten shall maintain a suit for criminal conversation with his wife.

Power to make rules.

LXII. The high court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules, alterations and additions shall be published in the local official gazette.

SCHEDULE OF FORMS.

No. 1.—PETITION *by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.*

(*See Sections* 10 *&* 34).

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of]

The day of 186.

The petition of *A. B.* of

SHEWETH,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to *C. B.*, then *C. D.*, spinster at , (*a*)

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and

(*a*) If the marriage was solemnized out of India, the adultery must be shewn to have been committed in India.

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X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid; and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said *C. B.* in your petitioner's said house committed adultery with the said *X. Y.*

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) court will decree a dissolution of the said marriage, and that the said *X. Y.* do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) court seems fit.

Signed *A. B.* (*a*)

FORM OF VERIFICATION.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2.—Respondent's statement in answer to No. 1.

In the Court of the day of

Between *A. B.*, petitioner,
C. B., respondent, and
X. Y., co-respondent.

C. B., the respondent, by *D. E.* her attorney [*or* vakil] in answer to the petition of *A. B.* says that she denies that she has on divers or any occasions committed adultery with *X. Y.* as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) court will reject the said petition.

(Signed) *C. B.*

No. 3.—Co-respondent's statement in answer to No. 1.

In the (High) Court of

The day of

Between *A. B.*, petitioner,
C. B., respondent, and
X. Y., co-respondent.

(*a*) The petition must be signed by the petitioner.

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X. Y., the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C. B.* as alleged in the said petition.

Wherefore the said *X. Y.* prays that this (Hon'ble) court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) *X. Y.*

No. 4.—PETITION *for Decree of Nullity of Marriage.* (*See Section* 18).

In the (High) court of

To the Hon'ble Mr. Justice [*or to the Judge of*]

The day of , 186 .

The petition of *A. B.* falsely called *A. D.*

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C. D.*, then a bachelor of about thirty years of age at [*some place in India.*]

2. That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C. D.*, at divers places, and particularly at aforesaid.

3. That the said *C. D.* has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said *C. D.* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C. D.* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) court will declare that the said marriage is null and void.

(Signed) *A. B.*

FORM OF VERIFICATION: *See No.* 1.

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No. 5.—PETITION *by wife for judicial separation on the ground of her husband's adultery.*

(*See Section* 22).

In the (High) court of

To the Hon'ble Mr. Justice [*or* To the judge of]

The day of 186

The petition of *C. B.*, of the wife of *A. B.*

SHEWETH,

1. That on the day of , one thousand eight hundred and *sixty* your petitioner, then *C. D.*, was lawfully married to *A. B.*, at the church of , in the

2. That after her said marriage, your petitioner cohabited with the said *A. B.* at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, &c. (*a*).

3. That on divers occasions in or about the months of *August*, *September* and *October*, one thousand eight hundred and *sixty* , the said *A. B.* at aforesaid committed adultery with *E. F.*, who was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October*, *November* and *December*, one thousand eight hundred and *sixty* , the said *A. B.* at aforesaid, committed adultery with *G. H.*, who was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A. B.* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C. B.* (*b*).

FORM OF VERIFICATION : *See No.* 1.

(*a*) State the respective ages of the children.
(*b*) The petition must be signed by the petitioner.

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No 6.—Statement in answer to No. 5.

In the (High) Court of

B. against *B.*

The day of

The respondent, *A. B.*, by *W. Y.*, his attorney [*or* vakil] saith,—

1. That he denies that he committed adultery with *E F*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E F*, if any.

3. That he denies that he committed adultery with *G H*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G H*, if any.

Wherefore this respondent prays that this (Hon'ble) court will reject the prayer of the said petition.

(Signed) *A. B.*

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B. against *B.*

The day of

The petitioner, *C B*, by her attorney [*or* vakil], says—

1. That she denies that she condoned the said adultery of the respondent with *E F* as in the second paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G H* as set forth in the fourth paragraph of the petition.

(Signed) *C. B.*

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No. 8.—PETITION *for a judicial separation by reason of cruelty.*

[*See Section* 22].

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of]

The day of 186 .

The petition of *A. B.* (wife of *C. B.*) of

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then *A. D.*, spinster, was lawfully married to *C B.*, at

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said *C B* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of one thousand eight hundred and , the said *C B* in the highway and opposite to the house in which your petitioner and the said *C B* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F D*, your petitioner's brother.

5. That subsequently on the same evening, the said *C B* in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of one thousand eight hundred and , the said *C B*, in

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without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, withdrew from the house of her said husband to the house of her father at : that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C. B.*, and also order that the said *C. B.* do pay the costs of and incident to these proceedings.

(Signed) *A. B.*

FORM OF VERIFICATION: *See No.* 1.

No. 9.—*Statement in answer to No.* 8.

In the (High) Court of

The day of

Between *A. B.*, petitioner, and

C. B., respondent.

C B, the respondent, in answer to the petition filed in this cause by *W J* his attorney [*or* vakil] saith that he denies that he has been guilty of cruelty towards the said *A B*, as alleged in the said petition.

(Signed) *C. B.*

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No. 10.—PETITION *for reversal of decree of separation.*

(*See Section* 24).

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of]

The day of 186

The petition of *A. B.*, of

SHEWETH,

1. That your petitioner was on the day of lawfully married to

2. That on the day of , this (Hon'ble) court at the petition of pronounced a decree affecting the petitioner to the effect following, to wit,—

[*Here set out the decree*].

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence*]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife*].

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A. B.*

FORM OF VERIFICATION: *See No.* 1.

No. 11.—PETITION *for Protection-order.*

(*See Section* 27).

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of]

The day of 186

The petition of *C. B.* of

the wife *A. B.*

SHEWETH,

That on the day of she was lawfully married to *A B*, at

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That she lived and cohabited with the said *A.B.* for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said *A B*, without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*], and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A B*, and from all creditors and persons claiming under him.

(Signed) *C. B.*

No. 12.—PETITION *for alimony pending the suit.*

(*See Section* 36).

In the (High) Court of

B. against *B.*

To the Hon'ble Mr. Justice [*or* To the Judge of]
The day of 186 .

The petition of *C B.*, the lawful wife of *A. B.*

SHEWETH,

1. That the said *A B* has for some years carried on the business of , at , and from such business derives the nett annual income of from Rs. 4,000 to 5,000.

2. That the said *A B* is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

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3. That the said *A B* is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount. (*a*).

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C. B.*

FORM OF VERIFICATION : *See No.* 1.

No. 13.—*Statement in answer to No* 12.

In the (High) Court of

B. against *B.*

A. B. of , the above-named respondent, in answer to the petition for alimony, pending the suit of *C. B.*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own monies. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

(*a*) The petitioner should state her husband's income as accurately as possible.

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3. I admit that I am entitled under the will of my father subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of as I verily believe, Rs. 800 at the least: and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A. B.*

No. 14.—UNDERTAKING *by minor's next friend to be answerable for respondent's costs.*

(*See Section* 49.)

In the (High) Court of

I, the undersigned *A B*, of being the next friend of *C D* who is a minor, and who is desirous of filing a petition in this court, under the Indian Divorce Act, against *D D* of , hereby undertake to be responsible for the costs

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of the said *D D* in such suit, and that, if the said *C D* fail to pay to the said *D. D.* when and in such manner as the court shall order all such costs of such suit as the court shall direct him [*or* her] to pay to the said *D D*, I will forthwith pay the same to the proper officer of this court.

Dated this day of 186.

(Signed) *A. B.*

A. D. 1869. ACT XIX.

AN ACT *to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts.*

Passed on the 3rd September 1869.

Preamble.

WHEREAS under the Administrator General's Act, 1867, the administrator general of Madras is, in the cases therein mentioned, entitled to administer to the estates of deceased British subjects in the Hyderabad Assigned Districts; and whereas the facilities of communication between the said districts and Bombay are now greater than those between the said districts and Madras, and it is therefore expedient to substitute, so far as regards the said estates, the administrator general of Bombay for the administrator general of Madras; it is hereby enacted as follows:—

Alterations of Act XXIV. of 1867, Sec. 3.

I. The definition of "Presidency of Madras" contained in the third section of the Administrator General's Act, 1867, shall be read as if the words "and the Hyderabad Assigned Districts" were omitted therefrom;

and the definition of "Presidency of Bombay" contained in the same section shall be read as if the following words were added thereto (that is to say) "and also, so far as regards British subjects, the Hyderabad Assigned Districts."

Saving of probates and administrations already granted to administrator general of Madras.

II. Nothing in this Act shall affect the rights, powers or duties of the administrator general of Madras, under or by virtue of any probate or letters of administration heretofore granted to him.

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A. D. 1870. ACT V.

AN ACT *to enable the High Court at the presidency Towns to deal with costs of petitions for certain monies transferred to Government.*

Passed on the 4th February 1870.

Preamble. WHEREAS the High Courts of Judicature at Fort William, Madras and Bombay have no power to deal with the costs of petitions under section 4 of Act No. XXV. of 1866 (*to transfer to the Government of India certain securities and monies deposited in the High Courts of Judicature at Fort William, Madras and Bombay, and in the Supreme Court of the Straits' Settlement, and the proceeds of certain estates in the charge of the Administrator General of Bengal*), or under section 60 of the Administrator General's Act, 1867, for payment of certain securities, monies or proceeds transferred to Government; and whereas it is expedient to confer such power upon the said high courts; it is hereby enacted as follows:—

Power to direct by whom costs are to be paid. I. Whenever any of the said courts shall make an order on any such petition, the court may direct by whom the whole or any part of the costs of each party are to be paid.

A. D. 1870. ACT XXI.

AN ACT *to regulate the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.*

Passed on the 19th July 1870.

Preamble. WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant Governor of Bengal and in the towns of Madras and Bombay; it is hereby enacted as follows:—

Short title. I. This Act may be called "The Hindu Wills' Act, 1870."

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II. The following portions of the Indian Succession Act, 1865, namely,— Certain portions of Succession Acts extended to wills of Hindus, Jainas, Sikhs and Buddhists.

sections forty-six, forty-eight, forty-nine, fifty, fifty-one, fifty-five and fifty-seven to seventy-seven (both inclusive),

sections eighty-two, eighty-three, eight-five, eighty-eight to one hundred and three (both inclusive),

sections one-hundred and six to one hundred and seventy-seven (both inclusive),

sections one hundred and seventy-nine to one hundred and eighty-nine (both inclusive),

sections one hundred and ninety-one to one hundred and ninety-nine (both inclusive),

so much of Parts XXX. and XXXI. as relates to grants of probate and letters of administration with the will annexed and

Parts XXXIII. to XL. (both inclusive), so far as they relate to an executor and an administrator with the will annexed,

shall, notwithstanding any thing contained in section three hundred and thirty-one of the said Act, apply—

(*a*) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the high courts of judicature at Madras and Bombay; and Extent of Act.

(*b*) to all such wills and codicils made outside those territories and limits, so far as relates to immovable property situate within those territories or limits:

III. Provided that marriage shall not revoke any such will or codicil: Provisos.

And that nothing herein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section two of this Act, he could not deprive them by will:

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And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos*:

And that nothing herein contained shall affect any law of adoption or intestate succession:

And that nothing herein contained shall authorise any Hindu, Jaina, Sikh or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

Partial repeal of Bengal Regulation V of 1799, Section 2.

IV. On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a district court in the territories subject to the Lieutenant Governor of Bengal.

Saving of rights of administrator general.

V. Nothing contained in this Act shall affect the rights, duties and privileges of the administrators general of Bengal, Madras and Bombay respectively.

Interpretation-clause.

VI. In this Act and in the said Sections and Parts of the Indian Succession Act, all words defined in section three of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively:

And in applying sections sixty-two, sixty-three, ninety-two, ninety-six, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three and one hundred and eighty-two of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural born, of a child whether adopted or natural born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son:

And in making grants under this Act of letters of administration with the will annexed or with a copy of the will

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annexed, section one hundred and ninety-five of the said Succession Act shall be construed as if the words "and in case the Hindu Wills Act had not been passed" were added thereto; and section one hundred and ninety-eight of the said Succession Act shall be construed as if, after the word intestate, the words "and the Hindu Wills' Act had not been passed" were inserted; and sections two hundred and thirty and two hundred and thirty-one of the said Succession Act shall be construed as if the words "if the Hindu Wills' Act had not been passed" were added thereto respectively.

A. D. 1871. ACT VIII.

AN ACT *for the Registration of Documents.*

WHEREAS it is expedient to consolidate and amend the laws relating to the registration of documents; it is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

I. This Act may be called "The Indian Registration Act, 1871:" Short title.

It extends to the whole of British India, except such districts or tracts of country as the local Government may from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation; Local extent.

And it shall come into force on the first day of July 1871. Commencement.

II. On and from that day the enactments mentioned or referred to in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the same schedule. But all appointments, notifications, rules and orders made, and all offices established under any of the said enactments, shall be deemed to have been respectively made and established under this Act, except in so far as such rules and orders may be inconsistent herewith. Repeal of enactments.

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References made in Acts passed before the first day of July 1871, to any enactment hereby repealed, shall be read as if made to the corresponding section of this Act.

And so far as regards suits instituted before the first day of April 1873, nothing herein contained affects Act No. XIV. of 1859, section one, clause ten, as amended by Act No. XX. of 1866, section twenty-seven.

And nothing herein contained affects Act No. XX. of 1866, so far as relates to the procedure upon any agreement recorded under section fifty-two of that Act at any time before that day, or the procedure provided by that Act for the registration and deposit of authorities to adopt executed before the first day of January 1872.

Interpretation-clause

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

Lease.

"Lease" includes a counterpart, a kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease:

Signature. Signed.

"Signature" and "signed" include and apply to the affixing of a mark:

Immovable property.

"Immovable property" includes land, buildings, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass:

Movable property.

"Movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property:

Book

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book, or portion of a book:

Endorsement. Endorsed.

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

Minor.

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority:

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"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot: Representative.

"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name. Addition.

"District Court" includes the high court in its ordinary original civil jurisdiction: District Court.

"District" and "Sub-District" respectively mean a district and sub-district formed under this Act. District, Sub-District.

PART II.

OF THE REGISTRATION ESTABLISHMENT.

IV. The local Government shall appoint an officer to be the inspector-general of registration for the territories subject to such goverment, Inspector-general.

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the inspector-general shall be exercised and performed by such officer or officers and within such local limits as the local Government from time to time appoints in this behalf.

The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be branch inspector-general of Sindh, who shall have all the powers of the inspector-general under this Act other than the power to frame rules hereinafter conferred. Branch inspector-general of Sindh.

Any inspector-general or the branch inspector-general of Sindh may hold simultaneously any other office under Government.

V. For the purposes of this Act, the local Government shall form districts and sub-districts, and shall prescribe and may from time to time alter the limits of such districts and sub-districts. Districts and sub-districts.

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The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars and sub-registrars.

VI. The local Government may appoint such persons, whether public officers or not, as it thinks proper, to be registrars of the several districts, and to be sub-registrars of the several sub-districts formed as aforesaid respectively.

Offices of registrar and sub-registrar.

VII. The local Government shall establish in every district an office to be styled the office of the registrar, and in every sub-district an office to be styled the office of the sub-registrar,

and may amalgamate with any office of a registrar any office of a sub-registrar.

Inspectors of registration offices.

VIII. The local Government may also appoint officers to be called inspectors of registration offices, and may from time to time prescribe the duties of such officers. Every such inspector shall be subordinate to the inspector-general.

Military cantonments may be declared sub-districts.

IX. Every military cantonment where there is a cantonment magistrate may (if the local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such magistrate shall be the sub-registrar or the registrar of such sub-district or district, as the case may be.

Whenever the Governor-General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be registrar of the district and inspector-general, and in the case of a district, what authority shall be inspector-general with reference to such cantonment and the sub-registrar or registrar thereof.

Absence of a registrar from his district or vacancy in his office.

X. Whenever any registrar other than the registrar of a district including a presidency town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

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any person whom the inspector-general appoints in this behalf, or, in default of such appointment, the judge of the district court within the local limits of whose jurisdiction the registrar's office is situate,

shall be the registrar during such absence or until the local Government fills up the vacancy.

Whenever the registrar of a district including a presidency town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

any person whom the inspector-general appoints in this behalf shall be the registrar during such absence, or until the local Government fills up the vacancy.

Absence of registrar on duty in his district.

XI. Whenever any registrar is absent from his office on duty in his district, he may appoint any sub-registrar or other person in his district to perform, during such absence, all the duties of a registrar, except those mentioned in sections sixty-eight and seventy-two.

Absence of Sub-Registar or vacancy in his office.

XII. Whenever any sub-registrar is absent, or when his office is temporarily vacant,

any person whom the registrar of the district appoints in this behalf shall be sub-registrar during such absence, or until the local Government fills up the vacancy.

Appointments under section ten, eleven, or twelve to be reported to local Government.

XIII. All appointments made under section ten, section eleven, or section twelve shall be reported to the local Government by the inspector-general. Such report shall be either special or general, as the local Government directs.

Suspension, removal and dismissal of registering officers.

The local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Remuneration and establishments of registering officers.

XIV. Subject to the approval of the Governor-General in Council, the local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The local Government may allow proper establishments for the several offices under this Act.

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Seals of registering offices.

XV. The several registrars and sub-registrars shall use a seal bearing the following inscription in English and in such other language as the local Government directs:—"The seal of the registrar (*or* of the sub-registrar) of "

Register books.

XVI. The local Government shall provide for the office of registering officers the books necessary for the purposes of this Act.

Forms.

The books so provided shall contain the forms from time to time prescribed by the inspector-general, with the sanction of the local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Fire-proof boxes.

The local Government shall supply the office of every registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

Documents of which the registration is compulsory.

XVII. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI. of 1864, or Act No. XX. of 1866, or this Act came or comes into force (that is to say)

(1) Instruments of gift of immovable property:

(2) Other instruments (not being wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

(3) Instruments (not being wills) which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest; and

(4) Leases of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent.

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Provided that the local Government may, by order published in the official gazette, exempt from the operation of the former part of this section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

Nothing in clauses (2) and (3) of this section applies—

(*a*) to any composition deed.

Exception of composition-deeds; and of transfers of shares and debentures in land companies.

(*b*) to any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property, or

(*c*) to any endorsement upon or transfer of any debenture issued by any such company.

Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

XVIII. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

Documents of which the registration is optional.

(1) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property:

(2) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(3) Leases of immovable property for any term not exceeding one year, and leases exempted under section seventeen:

(4) Awards relating to immovable property:

(5) Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title, or interest to or in movable property:

(6) Wills:

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(7) Acknowledgments, agreements, appointments, articles of partnership, assignments, awards, bills of exchange, bills of sale, bonds, composition-deeds, conditions of sale, contracts, certified copies of decrees and orders of courts, covenants, grants, instruments of dissolution of partnership, instruments of partition, powers of attorney, promissory notes, releases, settlements, writings of divorcement, and all other documents not hereinbefore mentioned.

Documents in language not understood by registering officer.

XIX. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

Documents containing interlineations, blanks, erasures or alterations.

XX. The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description of parcels.

XXI. (*a.*) No document not testamentary relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(*b.*) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

Documents containing maps or plans.

(*c*) No document not testamentary containing a map or plan of any property comprised therein shall be accepted for

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registration unless it be accompanied by a true copy of the map or plan, or in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Failure to comply with rules as to description of houses and land.

XXII. Failure to comply with the provisions contained in section twenty-one clause (*b*) shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

PART IV.

OF THE TIME OF PRESENTATION.

Time for presenting documents of which the registration is compulsory.

XXIII. Subject to the provisions contained in sections twenty-four, twenty-five and twenty-six, no document required by section seventeen to be registered, and no document mentioned in section eighteen, other than a will, shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final:

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision where delay in presentation is unavoidable.

XXIV. If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a sub-registrar, who shall forthwith forward it to the registrar to whom he is subordinate.

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Documents executed out of British India.

XXV. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time herein-before prescribed in that behalf, the registering officer, if satisfied,

(1) that the instrument was so executed, and

(2) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration fee, accept such document for registration.

Provision where office is closed on last day of period for presentation.

XXVI. Whenever a registration office is closed on the last day of any period herein-before provided for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be presented or deposited at any time.

XXVII. A will may at any time be presented for registration, or deposited in manner herein-after provided.

PART V.

OF THE PLACE OF REGISTRATION.

Place for registering documents relating to immovables.

XXVIII. Save as in this Part otherwise provided, every document mentioned in section seventeen, clauses (1), (2), (3), and (4), and section eighteen, clauses (1), (2), (3), and (4), shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering other documents.

XXIX. Every document, other than a document referred to in section twenty-eight, and a copy of a decree or order, may be presented for registration, either in the office of the sub-registrar in whose sub-district the document was executed, or in the office of any other sub-registrar under the local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the sub-registrar in whose sub-district

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the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other sub-registrar under the local Government at which all the persons claiming under the decree desire the copy to be registered.

Registration by registrar.

XXX. (*a*) Any registrar may in his discretion receive and register any document which might be registered by any sub-registrar subordinate to him.

Registration by registrar at presidency town.

(*b*) The registrar of a district including a presidency town may receive and register any document referred to in section twenty-eight without regard to the situation in any part of British India of the property to which the document relates.

Registration or acceptance for deposit at private residence.

XXXI. In ordinary cases, the registration or deposit of documents under this Act shall be made only at the office of the officer whose duty it is to register the same.

But such officer may, on special cause being shown, attend at the residence of any person intending to register any document which would ordinarily be registered at such office, or of any person desiring to deposit a will, and register or accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents for registration.

XXXII. Except in the case mentioned in section thirty-one, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative, or assign, duly authorized by power of attorney executed and authenticated in manner herein-after mentioned.

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Powers of attorney recognizable for purposes of Section 32.

XXXIII. For the purposes of section thirty-two, the powers of attorney next herein-after mentioned shall alone be recognized (that is to say),—

(*a*) if the principal at the time of executing the power of attorney resides in any part of British India in which this Act is for the time being in force, a power of attorney executed before and authenticated by the registrar or sub-registrar within whose district or sub-district the principal resides:

(*b*) if the principal at the time aforesaid resides in any other part of British India, a power of attorney executed before and authenticated by any magistrate:

(*c*) if the principal at the time aforesaid does not reside in British India, a power of attorney executed before and authenticated by a notary public, or any court, judge, magistrate, British consul or vice-consul, or representative of Her Majesty or of the Government of India.

Proviso as to persons infirm, or in jail, or exempt from appearing in court.

Provided that the following persons shall not be required to attend at any registration office or court for the purpose of executing any such power of attorney as is mentioned in clauses (*a*) and (*b*) of this section:

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

persons who are in jail under civil or criminal process; and

persons exempt by law from personal appearance in court.

In every such case the registrar or sub-registrar or judge (as the case may be), if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the registrar or sub-registrar or judge may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power of attorney mentioned in this section may be proved by the production of it without further proof, when

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it purports on the face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.

Inquiry before registration by the registering officer.

XXXIV. Subject to the provisions contained in this Part and in sections forty-one, forty-three, forty-five, sixty-nine, seventy-six, and eight-six, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation:

Provided that if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the registrar, in cases when the delay in appearing does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(*a*) inquire whether or not such document was executed by the persons by whom it purports to have been executed,

(*b*) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(*c*) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

Procedure on admission of execution.

XXXV. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

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the registering officer shall register the document as directed in sections fifty-eight to sixty-one inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

Procedure on denial of execution, &c.

If all or any of the persons by whom the document purports to be executed deny its execution,

or if any such person appears to be a minor, an idiot or a lunatic,

or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document.

Nothing in section thirty-four, or the former part of this section, applies to copies of decrees or orders.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

XXXVI. If any person presenting any document for registration desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or court as the local Government from time to time directs in this behalf, to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned and at a time named therein.

Officer or court to issue and cause service of summons.

XXXVII. The officer or court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration office.

XXXVIII. A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration office,

a person in jail under civil or criminal process,

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and persons exempt by law from personal appearance in court, and who would but for the provision next herein-after contained, be required to appear in person at the registration office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Law as to summonses, commissions, and witnesses in this Act.

XXXIX. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and for their remuneration in suits before civil courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provision of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

Persons entitled to present wills and authorities to adopt.

XL. The testator, or any person claiming as executor or otherwise under a will, may present it to any registrar or sub-registrar for registration,

and the donor or donee of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for registration.

Registration of wills and authorities to adopt.

XLI. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

A will or authority to adopt, presented for registration by any other preson entitled to present it, shall be registered if the registering officer is satisfied,

(1) that the will or authority was executed by the testator or donor, as the case may be,

(2) that the testator or donor is dead, and

(3) that the person presenting the will or authority is under section forty, entitled to present the same.

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PART IX.

OF THE DEPOSIT OF WILLS.

Deposit of wills.

XLII. Any testator may either personally or by duly authorized agent deposit with any registrar the will in a sealed cover superscribed with the name of the depositor and the nature of the document.

Procedure on deposit of wills.

XLIII. On receiving such sealed cover, the registrar, if satisfied that the depositor is the testator, or his duly authorized agent, shall transcribe in his Register Book No. 5 the superscription on such sealed cover, and note in the register and on the sealed cover the year, month, day, and hour of such presentation and receipt, together with the name of the depositor, and the name of each of the persons testifying to the identity of such depositor, and the inscription so far as it is legible on the seal of the cover.

The registrar shall then place and retain the sealed cover in his fire-proof book.

Withdrawal of sealed cover deposited under Section 42.

XLIV. If the depositor of any such sealed cover wishes to withdraw it, he may apply to the registrar with whom it has been so deposited for the delivery of the cover; and the registrar, if satisfied as to the identity of the depositor with the applicant, shall deliver the cover accordingly.

Proceedings on death of depositor.

XLV. If, on the death of the depositor of a sealed cover under section forty-two, application be made to the registrar with whom it has been deposited to open the same, the registrar, if satisfied that the depositor is dead, shall, in the applicant's presence, open the cover, and copy at the applicant's expense, the contents thereof in his Book No. 3.

Re-deposit.

When such copy has been made, the registrar shall re-deposit the original will.

Saving of Act X. of 1865, Section 259.

XLVI. Nothing herein-before contained shall affect the provisions of the Indian Succession Act, section two hundred and fifty-nine, or the power of any court by order to compel the production of any will. But whenever any such order is made, the registrar shall copy the will in his Book No. 3, and make a note on such copy that the original has been removed into court in pursuance of the order aforesaid.

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PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from which registered document operates.

XLVII. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Registered documents relating to property when to take effect against oral agreements.

XLVIII. All documents, not testamentary, duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

XLIX. No document required by section seventeen to be registered,

shall affect any immovable property comprised therein,

or confer any power to adopt,

or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered documents relating to immovables, of which the registration is optional, to take effect against unregistered documents.

L. Every document of the kinds mentioned in clauses (1) and (2) of section eighteen, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Explanation.—In cases where Act No. XVI. of 1864 or Act No. XX. of 1866 was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(*A.*) *As to the Register Books and Indexes.*

Register books to be kept in the several offices.

LI. The following books shall be kept in the several offices herein-after named (that is to say),—

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In all registration offices—

Book 1, "Register of documents relating to immovable property;"

Book 2, "Record of reasons for refusal to register;"

Book 3, "Register of wills and authorities to adopt;" and

Book 4, "Miscellaneous Register."

In the offices of registrars—

Book 5, "Register of deposits of wills."

In Book 1 shall be entered or filed all documents or memoranda registered under the first four clauses of sections seventeen and eighteen, and all other documents mentioned in section eighteen, clause (7), which relate to immovable property.

In Book 4 shall be entered all documents registered under clauses (5) and (7) of section eighteen, and not entered in Book 1.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of a registrar has been amalgamated with the office of a sub-registrar.

Endorsements on document presented.

Receipt for documents.

Documents admitted to registration to be copied.

LII. The day, hour, and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it; a receipt for such document shall be given by the registering officer to the person presenting the same; and, subject to the provisions contained in section sixty-two, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

And all such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the inspector-general.

Entries to be numbered consecutively.

LIII. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

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LIV. In every office in which any of the books herein-before mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied or filed a memorandum of the document to which it relates.

Current indexes and entries therein.

LV. Two such indexes shall be made in all registration offices, and shall be named respectively Index No. I. and Index No. II.

Indexes to be made by registering officers.

Index No. I. shall contain the names and additions of all persons executing and of all persons claiming under every document copied into, or memorandum filed in Book No. 1 or Book No. 3.

Index No. II. shall contain such particulars mentioned in section twenty-one, relating to every such document and memorandum as the inspector-general from time to time directs in that behalf.

A third index, to be called Index No. III., shall contain the names and additions of all persons executing, and of all persons claiming under every document copied into Book No. 4.

Indexes Nos. I., II. and III. shall contain such other particulars, and shall be prepared in such form, as the inspector-general from time to time directs.

Extra particulars in indexes.

LVI. Every sub-registrar shall send to the registrar to whom he is subordinate, at such intervals as the inspector-general from time to time directs, a copy of all entries made by such sub-registrar during the last of such intervals in Indexes No. I. and II.

Copy of entries in Indexes Nos. I. and II. to be sent by sub-registrar to registrar.

Every registrar receiving such copy shall file it in his office.

Such copy to be filed in registrar's office.

LVII. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section sixty-two, copies of entries in such books shall be given to all persons applying for such copies.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

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Subject to the same provisions, copies of entries in Books Nos. 3 and 4, and in the indexes relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer; but the requisite search for such entries shall be made only by the registering officer.

Such copies shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(*B.*) *As to the procedure on admitting to registration.*

Particulars to be endorsed on documents admitted to registration.

LVIII. On every document admitted to registration, other than a copy of a decree or order, there shall be endorsed, from time to time, the following particulars (that is to say),—

(1) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(2) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(3) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

LIX. The registering officer shall affix the date and his signature to all endorsements made under the last preceding section relating to the same document and made in his presence on the same day.

Certificate showing that document has been registered, and number and page of

LX. After such of the provisions of sections thirty-four thirty-five, fifty-eight, and fifty-nine as apply to any document presented for registration have been complied with, the

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registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied. book in which it has been copied.

Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement referred so in section fifty-nine have occurred as therein mentioned.

LXI. The endorsements and certificate referred to and mentioned in sections fifty-nine and sixty shall thereupon be copied into the margin of the register book, and the copy of the map or plan (if any) mentioned in section twenty-one shall be filed in Book No. 1. Endorsements and certificate to be copied.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section fifty-two. Document to be returned.

LXII. When a document is presented for registration under section nineteen, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section nineteen, shall be filed in the registration office. Procedure on presentation of a document in a language unknown to the registering officer.

The endorsements and certificate respectively mentioned in sections fifty-nine and sixty shall be made on the original, and, for the purpose of making the copies and memoranda required by sections fifty-seven, sixty-four, sixty-five, and sixty-six, the translation shall be treated as if it were the original.

LXIII. Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act. Power to administer oaths.

He may also, at his discretion, record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits Record of substance of statements.

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the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) Special duties of Sub-Registrar.

Procedure on sub-registrar's registration of document relating to immovable property situate in several sub-districts.

LXIV. Every sub-registrar on registering a document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate thereon, and send the same to every other sub-registrar subordinate to the same registrar as himself in whose sub-district any part of such property is situate, and such sub-registrar shall file the memorandum in his Book No. 1.

Procedure on sub-registrar's registration of document relating to immovable property situate in several districts.

LXV. Every sub-registrar, on registering a document relating to immovable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate thereon, together with a copy of the map or plan (if any) mentioned in section twenty-one, to the registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

The registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the sub-registrars subordinate to him within whose sub-district any part of such property is situate; and every sub-registrar receiving such memorandum shall file it in his Book No. 1.

(D) Special duties of Registrar.

Procedure on registering documents relating to immovables.

LXVI. On registering any document not testamentary relating to immovable property, the registrar shall forward a memorandum of such document to each sub-registrar subordinate to himself in whose sub-district any part of the property is situate.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section

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twenty-one, to every other registrar in whose district any part of such property is situate.

Such registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the sub-registrars subordinate to him within whose sub-district any part of the property is situate.

Every sub-registrar receiving any memorandum under this section shall file it in his Book No. 1.

LXVII. On any document being registered under section thirty, clause (*b*), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every registrar within whose district any part of the property to which the instrument relates is situate, and the registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section sixty-six.

Procedure on registration under section 30, clause *b*.

(*E*) *Of the controlling powers of Registrars and Inspectors General.*

LXVIII. Every sub-registrar shall perform the duties of his office under the superintendence and control of the registrar in whose district the office of such sub-registrar is situate.

Registrar to superintend and control sub-registrars.

Every registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any sub-registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

LXIX. The inspector general shall exercise a general superintendence over all the registration offices in the territories under the local Government, and shall have power, from time to time, to frame rules consistent with this Act—

Inspector-general to superintend registration offices. His power to frame rules.

providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept;

declaring what languages shall be deemed to be commonly used in each district;

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declaring what territorial divisions shall be recognized under section twenty-one;

regulating the amount of fines imposed under section twenty-four;

regulating the exercise of the discretion reposed in the registering officer by section sixty-three;

regulating the form in which registering officers are to make memoranda of documents;

regulating the authentication by registrars and sub-registrars of the books kept in their respective offices under section fifty-one;

declaring the particulars to be contained in Indexes Nos. I., II. and III. respectively;

declaring the holidays that shall be observed in the registration offices;

and generally regulating the proceedings of the registrars and sub-registrars.

The rules so framed shall be submitted to the local Government for approval, and, after they have been approved, they shall be published in the official gazette, and shall then have the same force as if they were inserted in this Act.

His power to remit fines.

LXX. The inspector-general may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section twenty-four or section thirty-four, and the amount of the proper registration fee.

PART XII.

OF REFUSAL TO REGISTER.

Reasons for refusal to register to be recorded by registrar or sub-registrar.

LXXI. Every registering officer refusing to register a document,

except (1) where the property to which the document relates is not situate within his district or sub-district, or (2) where the registering officer, being a registrar, declines to accept the document on the ground that it ought to be registered in the office of a sub-registrar,

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "regis-

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tration refused" on the document, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Registrar may alter or revise orders of sub-registrar refusing registration.

LXXII. An appeal shall lie against an order of a sub-registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the registrar to whom such sub-registrar is subordinate, if presented to such registrar within thirty days from the date of the order, and the registrar may reverse or alter such order:

Any registrar refusing to direct the registration of any document shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

Procedure where registrar refuses to register or direct registration of documents falling under section seventeen or section eighteen, clauses 1, 2, 3, and 4.

LXXIII. If a registrar makes, under section seventy-one or section seventy-two, an order of refusal to register or to direct the registration of any document,

or if he has made a like order under section eighty-two or section eighty-three of Act No. XX. of 1866,

or if the sub-registrar has refused to register the document on the ground that the person, or one of the persons, by whom the document purports to have been executed has denied the execution,

or if the registrar has himself, as sub-registrar, made an order of refusal under section seventy-one,

any person claiming under such document, or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply by petition to the district court, in order to establish his right to have the document registered.

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Petition.

LXXIV. The petition shall be in the form contained in the second schedule hereto annexed, or as near thereto as circumstances permit, and shall be accompanied by copies of the reasons recorded under sections seventy-one and seventy-two; the statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints, and the petition may be amended by permission of the court.

To be verified.

Court to fix day for hearing petition and copy thereof to be served.

LXXV. The court shall fix a day for the hearing of the petition, not less than two days after the service next hereinafter mentioned, and shall direct a copy of the petition, with a notice at the foot thereof of the day so fixed, to be served on the registering officer, and on such other persons (if any) as the court thinks fit; and the provisions of the Code of Civil Procedure as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to copies of petitions under this section.

Court may order document to be registered.

LXXVI. The court may summon and enforce the attendance of witnesses and compel them to give evidence,

and, on the day so fixed as aforesaid, or on any day to which the hearing of the petition may be adjourned, shall inquire—

(*a*) whether the document has been executed, and

(*b*) whether the requirements of the law for the time being in force have been complied with on the part of the petitioner so as to entitle the document to registration.

If it finds that the document has been executed and that the said requirements have been complied with, the court shall order the document to be registered,

and, if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections fifty-eight, fifty-nine, and sixty.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

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Provision for case in which the judge is the registering officer.

Provided that, when the officer presiding over the district court has himself, as registering officer, made any order complained of under this section, the petition shall, within sixty days after the making of such order, be presented to the high court, and the provisions contained in the former part of this section shall, *mutatis mutandis*, apply to such petition and the order (if any) thereon.

The district court or the high court, as the case may be, may direct by whom the whole or any part of the costs of any proceedings before it under this part shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure.

No appeal lies from any order made under this section.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

Fees to be fixed by local Government.

LXXVII. Subject to the approval of the Governor-General in Council, the local Government shall prepare a table of fees payable—

for the registration of documents:

for searching the registers:

for making or granting copies of reasons, entries, or documents, before, on, or after registration;

And of extra or additional fees payable—

for every registration under section thirty:

for the issue of commissions:

for filing translations:

for attending at private residences:

and for such other matters as appear to the local Government necessary to effect the purposes of this Act.

Alteration of fees.

The local Government may from time to time, subject to the like approval, alter such table.

Publication of fees.

A table of the fees so payable shall be published in the official gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

Fees payable on presentation.

LXXVIII. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

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PART XIV.

PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

LXXIX. Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under the provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

LXXX. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both:—

Making false statements before registering officer.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not before any officer acting in execution of this Act, in any proceeding or enquiry under this Act,

Delivering false copy or translation.

(*b*) intentionally delivers to a registering officer in any proceeding under section nineteen or section twenty-one a false copy or translation of a document, or a false copy of a map or plan,

False personation.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act,

Abetment of offences under this Act.

(*d*) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Registering officer may institute prosecutions.

LXXXI. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be instituted by or with the permission of the inspector-general, the branch inspector-general of Sindh, the registrar or the sub-registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any

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court or officer exercising powers not less than those of a subordinate magistrate of the first class:

Provided that in imposing penalties under this Act, no such court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the presidency towns, in the manner prescribed by the Code of Criminal Procedure; and if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force.

Registering officers to be deemed public servants.

LXXXII. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section two hundred and twenty-eight of the same code, the words "judicial proceeding" shall include any proceeding under this Act.

PART XV.

MISCELLANEOUS.

Destruction of unclaimed documents.

LXXXIII. Documents (other than wills) remaining unclaimed in any registration office, for a period exceeding two years, may be destroyed.

Registering officer not to be liable for anything *bona fide* done or refused in his official capacity.

LXXXIV. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Nothing done by registering officer to be invalidated by defect in his appointment of procedure.

LXXXV. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Registration of documents executed by Government officers or certain public functionaries.

LXXXVI. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the administrator-general of Bengal, Madras or Bombay, or for any official trustee, or for the sheriff, receiver or registrar of a high court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section fifty-eight.

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But when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any secretary to Government or to such officer of Government, administrator-general, official trustee, sheriff, receiver or registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Exemptions from Act.

Exemption of certain documents executed by or in favour of Government.

LXXXVII. Nothing contained in this Act or any Act hereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps :—

(*a*) Documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settlement.

(*b*) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey.

(*c*) Documents which, under any law for the time being in force, are filed periodically in any revenue office by patwáris or other officers charged with the preparation of village records.

(*d*) Sanads, in inâm title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

But all such documents and maps shall, for the purposes of sections forty-eight and forty-nine, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection and copies of such documents.

LXXXVIII. Subject to such rules and the previous payment of such fees as the local Government from time to time prescribes in this behalf, all documents and maps mentioned in section eighty-seven, clauses (*a*), (*b*), and (*c*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

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LXXXIX. From the first of July to the first of October 1871, in the territories respectively administered by the chief commissioners of Oudh and British Burmah, a power of attorney not duly executed according to the previsions of section thirty-three shall, notwithstanding anything therein contained, be deemed to have been duly executed under the provisions of the same section, if the registering officer is satisfied that it has been executed in good faith, and if a power of attorney attested under the provisions of this Act cannot be obtained within the time during which the document sought to be registered can, under such provisions, be accepted for registration.

Recognition in Oudh and Burmah for three months of powers of attorney not duly executed.

XC. All rules relating to registration heretofore enforced in British Burmah shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of any thing done under any of the said rules.

Burmese registration rules confirmed.

FIRST SCHEDULE.

(*See Section* 2.)

Number and year.	Title.	Extent of repeal.
XXII. of 1864.	An Act to make provision for the administration of Military Cantonments.	Sections ten and forty-five.
XX. of 1866.	An Act to provide for the Registration of Assurances.	The whole.
XXVII. of 1868.	An Act to exempt certain Instruments from the Indian Registration Act, 1866.	The whole.
VII. of 1870.	The Court Fees' Act.	In Schedule I the number and words following: "3. Petition under the Indian Registration Act, section fifty-three."
	All Rules relating to the registration of documents and having the force of law in Oudh.	The whole.
	All Rules relating to the registration of documents and having the force of law in any part of British Burmah.	The whole.

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SECOND SCHEDULE.

Form of Petition under Section 73.

Stamp. Eight Annas.

To the Judge of the District Court [*or* To the Deputy Commissioner] of

The day of 18 .

The petition of A. B. of

SHEWETH—

1. That by an instrument dated the day of and made between C D of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner absolutely.

2. That such instrument was executed by the said C D on the day of 18 .

3. That the property to which such instrument relates is situate in the sub-district of the sub-registrar of and in the district of

4. That on the day of your petitioner presented the said instrument for registration under "The Indian Registration Act, 1871," in the office of the said sub-registrar.

5. That the said sub-registrar thereupon made an order of refusal, dated the day of 18 , to register the said instrument, and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner on the day of appealed to the registrar of against such order.

7. That the said registrar thereupon made an order of refusal, dated the day of to direct the registration of the said instrument, and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

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8. That the reasons referred to in paragraphs 5 and 7 of this petition are, as your petitioner submits, insufficient.

Your petitioner therefore prays that your honour will order the said sub-registrar to register the said instrument.

A. B.

Another Form.



To the Judge of the District court [*or* To the Deputy Commissioner] of

The day of 18 .

The petition of A. B. of

SHEWETH—

1. That by an instrument dated the day of and made between C D of the one part and your petitioner of the other part, certain lands were conveyed to your petitioner by way of mortgage to secure the sum of one thousand rupees.

2. That such instrument was executed by the said C D on the day of 18 .

3. That the property to which such instrument relates is situate in the sub-district of the sub-registrar of and in the district of

4. That on the day of your petitioner presented the said instrument for registration under the Indian Registration Act, 1871, in the office of the said sub-registrar, and the said C D appeared personally before the said sub-registrar, and falsely denied the execution of the said instrument.

5. That the said sub-registrar thereupon made an order of refusal dated the day of 18 to register the

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said instrument, and gave your petitioner a copy, which is filed herewith, of the reasons for such order.

6. That your petitioner has complied with the requirements of the said Act so far as it has been possible for him to do so.

Your petitioner therefore prays that your Honour will order the said sub-registrar to register the said instrument.

A. B.

FORM OF VERIFICATION.

I, A B, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

A. D. 1871. ACT IX.

AN ACT *for the limitation of suits and for other purposes.*
Passed on the 24th March 1871.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to court; and whereas it is also expedient to provide rules for acquiring ownership by possession; it is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Limitation Act, 1871;"

Extent of Act. It extends to the whole of British India; but nothing contained in sections two and three or in Parts II. and III. applies—

(*a*) to suits instituted before the first day of April 1873.

(*b*) to suits under the Indian Divorce Act,

(*c*) to suits under Madras Regulation VI. of 1831.

Commencement. This Act shall come into force on the first day of July 1871.

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

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

"minor" means a person who has not completed his age of eighteen years;

"plaintiff" includes also any person through whom a plaintiff claims;

"nuisance" means anything done to the hurt or annoyance of another's immovable property and not amounting to a trespass;

"bill of exchange" includes also a hundi;

"trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title;

"registered" means duly registered under the law for the registration of documents in force at the time and place of executing the document referred to in the context;

"foreign country" means any country other than British India;

and nothing shall be deemed to be done in "good faith" which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

IV. Subject to the provisions contained in sections five to twenty-six (inclusive), every suit instituted, appeal presented, and application made after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence. Dismissal of suits, &c., instituted, &c., after period of limitation.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer: in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a com-

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pany which is being wound up by the court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(*a*) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate court must dismiss the suit.

(*b*) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Proviso where court is closed when period expires.

V. (*a.*) If the period of limitation prescribed for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, presented or made on the day that the court re-opens;

Proviso as to appeals and applications for review.

(*b.*) Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not presenting the appeal or making the application within such period.

Different periods of limitation prescribed by local laws.

VI. When, by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law.

Appeals from decrees of high courts on original side.

And nothing herein contained shall affect the periods of limitation prescribed for appeals from, or applications to review, any decree, order or judgment of a high court in the exercise of its original jurisdiction.

Legal Disability.

Legal disability.

VII. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot,

he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

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When his disability continues up to his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which the suit must be brought.

Illustrations.

(*a*) The right to sue for the hire of a boat accrues to A during his minority. He comes of age four years after the accrual of the right. He may institute his suit at any time within three years from the date of his coming of age.

(*b*) A, to whom a right to sue for a legacy has accrued during his minority, attains full age eleven years after such right accrued. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his majority, within which he may bring his suit.

(*c*) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accrual of the right A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(*d*) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual of the right, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time.

Disability of one joint creditor.

VIII. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until they all are free from disability.

Continuous running of time.

IX. When once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of

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the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and their representatives.

X. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his representatives, for the purpose of following in his or their hand such property, shall be barred by any length of time.

Explanation.—A purchaser in good faith for value from a trustee is not his representative within the meaning of this section.

Suits on foreign contracts.

XI. Suits in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign limitation law.

XII. No foreign rule of limitation shall be a defence to a suit in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of day on which right to sue accrues.

XIII. In computing the period of limitation prescribed for any suit, the day on which the right to sue accrued shall be excluded.

Exclusion in case of appeals and certain applications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, an application to the high court for the admission of a special appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India.

XIV. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded, unless service

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of a summons to appear and answer in the suit can, during such absence, be made under the Code of Civil Procedure, section sixty.

Exclusion of time of suing *bona fide* in Court without jurisdiction.

XV. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a court of first instance or in a court of appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded upon the same right to sue, and is instituted in good faith in a court which from defect of jurisdiction, or other cause of a like nature, is unable to try it.

Explanation 1.—In excluding the time during which a former suit was pending, the day on which that suit was instituted, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

Exclusion of time during which commencement of suit is stayed by injunction.

XVI. In computing the period of limitation prescribed for any suit, the commencement of which has been stayed by injunction, the time of the continuance of the injunction shall be excluded.

Exclusion of time during which judgment-debtor sues to set aside execution sale.

XVII. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a suit to set aside the sale shall be excluded.

Effect of death before right to sue accrues.

XVIII. When a person who would, if he were living, have a right to sue, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative in interest of the deceased capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative whom the plaintiff may sue.

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Nothing in the former part of this section applies to suits for the possession of land or of an hereditary office.

Effect of fraud.

XIX. When any person having a right to sue has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

and where any document necessary to establish such right has been fraudulently concealed,

the time limited for commencing a suit,

(*a*) against the person guilty of the fraud or accessory thereto, or,

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

XX. (*a*) No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith or by his agent generally or specially authorized in this behalf.

(*b*) When such writing exists, a new period of limitation according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

(*c*) When the writing containing the promise or acknowledgment is not dated, oral evidence may be given of the time when it was signed. But when it is alleged to have been destroyed or lost, oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section, promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set-off, or is addressed to any person other than the creditor or legatee;

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but it must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting.

Explanation 2.—Nothing in section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.

Illustrations.

Z, a bond-debtor, himself writes a letter promising to pay the debt to his creditor A. Z affixes his seal, but does not sign the letter:

Z pays part of the debt and promises orally to pay the rest:

Z publishes an advertisement, requesting his creditors to bring in their claims for examination:

In none of these cases is the debt taken out of the operation of this Act.

Effect of payment of interest as such.

XXI. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent generally or specially authorized in this behalf,

Effect of part-payment of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent generally or specially authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made:

Provided that, in the case of part-payment of principal, the debt has arisen from a contract in writing and the fact of the payment appears in the handwriting of the person making the same, on the instrument, or in his own books or in the books of the creditor.

Effect of substituting or adding new plaintiff or defendant.

XXII. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have commenced when he was so made a party:

Proviso where original plaintiff dies.

Provided that, when a plaintiff dies and the suit is continued by his representatives in interest, it shall, as regards them, be deemed to have commenced when it was instituted by the deceased plaintiff:

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Proviso where original defendant dies.

Provided also that when a defendant dies, and the suit is continued against his representatives in interest, it shall, as regards them, be deemed to have been commenced when it was instituted against the deceased defendant.

Computation where there are successive breaches of contract.

XXIII. In the case of a suit for the breach of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Computation where the breach is continuing.

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due.

Illustrations.

(*a*) A contracts to pay an annuity to B for his life by quarterly instalments. A fails to pay any of the instalments. Here upon every fresh failure, a fresh right to sue arises, and a fresh period of limitation begins to run; and this Act may bar the remedy on the earlier breaches without affecting the remedy on the later breaches.

(*b*) A, a tenant, covenants with B, his landlord, to keep certain buildings in repair. At every moment of the time during which the buildings continue out of repair and B retains his right of entry, a fresh right to sue arises, and a fresh period of limitation begins to run.

Continuing nuisance.

XXIV. In the case of a continuing nuisance, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the nuisance continues.

Illustration.

A diverts B's water-course. At every moment of the time during which the diversion continues and B retains his right of entry, a fresh right to sue arises and a fresh period of limitation begins to run.

Suit for compensation for act becoming unlawful.

XXV. In the case of a suit for compensation for an act lawful in itself, which becomes unlawful in case it causes damage, the period of limitation shall be computed from the time when the damage accrues.

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Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation runs from the time of the subsidence.

Computation of time mentioned in instruments.

XXVI. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(*a*) A Hindu makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(*b*) A Hindu makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition of right to easement.

XXVII. Where the access and use of light or air to and for any building has been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or water-course, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to, or ac-

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quiesced in, for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(*a*) A suit is brought in 1871 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January 1850 to 1st January 1870. The plaintiff is entitled to judgment.

(*b*) In a like suit also brought in 1871 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1848 to 1868. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

XXVIII. Provided that, when any land or water upon, over or from which any easement (other than the access and use of light and air) has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof,

the time of the enjoyment of such easement during the continuance of such interest or term, shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a deceased Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to land or hereditary office.

XXIX. At the determination of the period hereby limited to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished.

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FIRST SCHEDULE.

(*See Section* 2.)

Number and year.	Subject or Title.	Extent of repeal.
21 Jas. I., cap. sixteen.	An Act for limitation of actions and for avoiding of suits in law	The whole statute, so far as it applies to British India.
4 Ann. cap. sixteen.	An Act for the amendment of the law and the better advancement of justice.	Sections seventeen, eighteen and nineteen, so far as they apply to British India.
33 Geo. III., cap. fifty-two.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade under certain limitations; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said company; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.	So much of section one hundred and sixty-two as relates to the limitation of civil suits in British India.
53 Geo. III, cap. one hundred and fifty-five.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges; for establishing further regulations for the government of the said territories, and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said company.	Section one hundred and twenty-four, so far as it applies to British India.
9 Geo. IV., cap. seventy-four.	Administration of criminal justice.	So much of section fifty-one as relates to civil suits.
6 & 7 Vic., cap. ninety-four.	Foreign Jurisdiction Act.	Section seven, so far as it applies to British India.
Act No. 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 the statute 9 Geo. IV., cap. 14.	From and including the words "Whereas by an Act," down to and including the words "Defendants against the plaintiff."

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FIRST SCHEDULE.—*continued.*

Number and year.	Subject or Title.	Extent of repeal.
Act No. XI. of 1841.	Military Courts of Requests.	The proviso in section nine.
Act No. XX. of 1847.	Copyright Act ...	In section sixteen, the words 'actions, suits, bills.'
Act No. XII. of 1855.	An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs	In section one the words "and provided such action shall be brought within one year after the death of such person," and the words "and so as such action shall be commenced within two years after the committing of the wrong."
Act No. XIII. of 1855.	Compensation for loss occasioned by death caused by actionable wrong.	In section two, the words "and that every such action shall be brought within twelve calendar months after the death of such deceased person."
Act No. XXV. of 1857.	Forfeiture for Mutiny.	Section nine.
Act No. VIII. of 1859.	The Code of Civil Procedure.	In section one hundred and nineteen, the words "within a reasonable time not exceeding thirty days after any process for enforcing the judgment has been executed," and the words "within thirty days from the date of the judgment." In section two hundred and thirty, the words "within one month from the date of the dispossession." The last twelve words of section two hundred & forty-six. In section two hundred and fifty-six, the words "At any time within thirty days from the date of the sale." In section two hundred and sixty-nine, the words "if made within one month from the date of such existence or obstruction or of such dispossession, as the case may be." In section three hundred and twenty-four, the second sentence. In section three hundred and twenty-seven, the words "within six months from the date of the award." In section three hundred and thirty-three, from and including the words "within the period" down to the end of the section. In section three hundred and forty-seven, the words "within thirty

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FIRST SCHEDULE.—*continued.*

Number and year.	Subject or Title.	Extent of repeal.
		days from the date of the dismissal." In section three hundred and seventy-three, the words "within the period prescribed for the presentation of a memorandum of appeal." So much of section three hundred and seventy-seven as has not been repealed.
Act No. XIV. of 1859.	An Act to provide for the limitation of suits.	The whole Act, except so much of section fifteen as does not relate to the limitation of suits.
Act No. IX. of 1860.	Workmen and employers. ...	So much of section two as relates to the limitation of suits.
Act No. XXXI. of 1860.	Arms Act ...	So much of section forty-nine as relates to the limitation of suits.
Act No. V. of 1861.	Mofussil Police ...	So much of section forty-two as relates to the limitation of suits.
Act No. XXIII. of 1861.	Civil Procedure Code Amendment...	Section twelve.
Act No. XXV. of 1861.	Criminal Procedure Code. ...	Section four hundred and fifteen.
Act No. I. of 1863.	Civil Courts in British Burmah.	Section twenty-four.
Act No. VI. of 1863.	Consolidated Customs Act.	So much of section two hundred and fourteen as relates to the limitation of suits.
Act No. XXIII. of 1863.	Claims to Waste lands. ..	So much of section five as relates to the limitation of suits.
Act No. VII. of 1865	Government Forests Act. ...	So much of section sixteen as relates to the limitation of suits.
Act No. XX. of 1866.	Registration Act. ...	Section fifty-one.
Act No. XIV. of 1868.	Contagious Diseases Act. ...	So much of section twenty-five as relates to the limitation of suits.
Act No. XX. of 1869.	Volunteers ...	So much of section twenty-six as relates to the limitation of suits.
Act No. X. of 1870.	Land Acquisition ...	So much of section fifty-eight as relates to the limitation of suits.
Act No. IV. of 1871.	Coroners ...	In section forty-two, the words 'after the expiration of three months from such fact or failure, nor.'
Bombay Regulation V. of 1827.	A Regulation defining the Limitations as to the time within which Civil Actions may be prosecuted, and containing Rules of Judication respecting written Acknowledgments of Debts executed without receipt of a full consideration; also regarding Interest, the tendering payment of Debts, and the disposal of Property mortgaged or pledged.	Chapter one.

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SECOND SCHEDULE.

(*See Section* 4.)

FIRST DIVISION: SUITS.

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
	Part I. Thirty days.	
1.—To contest an award of the Board of Revenue under Act No. XXIII. of 1863 (*to provide for the adjudication of claims to waste-lands*).	Thirty days.	When notice of the award is delivered to the plaintiff.
	Part II. Ninety days.	
2.—For doing, or for omitting to do an act in pursuance of any enactment in force for the time being in British India.	Ninety days.	When the act or omission took place.
	Part III. Six months.	
3.—Under Act No. XIV. of 1859 (*to provide for the limitation of suits*), section fifteen, to recover possession of immovable property.	Six months.	When the dispossession occurs.
4.—Under Act No. IX. of 1860 (*to provide for the speedy determination of certain disputes between workmen engaged in Railway and other public works, and their employers*), section one.	Do. ...	When the wages, hire, or price of work claimed accrued due.
5.—Under Act No. V of 1866 (*to provide a summary procedure on bills of exchange, and to amend, in certain respects, the commercial law of British India*).	Do. ...	When the bill or promissory note becomes due and payable.
	Part IV One year.	
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a domestic servant, artizan, or labourer not provided for by this schedule No. 4.	Do. ...	When the wage sued for accrue due.
8.—For the price of food or drink sold by the keeper of an hotel, tavern, or lodging house.	Do. ...	When the food or drink is delivered.
9.—For the price of lodging.	Do. ...	When the lodging ends.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Do. ...	When the purchaser takes actual possession under the sale sought to be impeached.
11.—For damages for infringing copyright or any other exclusive privilege.	Do. ...	The date of the infringement.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
12.—By executors, administrators, or representatives under Act No. XII. of 1855 (*to enable executors, administrators or representatives to sue and be sued for certain wrongs*)	One year ...	The date of the death of the person wronged.
13.—By executors, administrators, or representatives under Act No. XIII. of 1855 (*to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.*)	Do. ...	The date of the death of the person killed.
14.—To set aside any of the following sales :—	Do. ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
(*a*) sale in execution of a decree of a civil court.		
(*b*) sale in pursuance of a decree or order of a collector or other officer of revenue ;		
(*c*) sale for arrears of Government revenue or for any demand recoverable as such arrears ;		
(*d*) sale of a patni taluk sold for current arrears of rent.		
Explanation—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.		
15.—To alter or set aside a decision or order of a civil court in any proceeding other than a suit.	Do. ...	The date of the final decision or order in the case by a court competent to determine it finally.
16.—To set aside any act of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Do. ...	The date of the act.
17.—Against Government to set aside any attachment, lease, or transfer of immovable property by the revenue authorities for arrrears of Government revenue.	Do. ...	When the attachment, lease, or transfer is made.
18.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Do. ...	When the payment is made.
19.—Against Government for compensation for land acquired for public purposes.	Do. ...	The date of determining the amount of the compensation.
20.—Like suit for compensation when the acquisition is not completed.	Do. ...	The date of the refusal to complete.
21.—For false imprisonment.	Do. ...	When the imprisonment ends.
22.—For any other injury to the person.	Do. ...	When the injury is committed.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
23.—For a malicious prosecution.	One year ...	When the plaintiff is acquitted.
24.—For libel. ...	Do. ...	When the libel is published.
25.—For slander. ...	Do. ...	When the words are spoken.
26.—For taking or damaging movable property.	Do. ...	When the taking or damage occurs.
27.—For loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Do. ...	When the loss occurs.
28.—For inducing a person to break a contract with the plaintiff.	Do. ...	The date of the breach.
29.—For an illegal, irregular, or excessive distress.	Do. ...	The date of the distress.
30.—For wrongful seizure of movable property under legal process.	Do. ...	The date of the seizure.
	Part V. Two years.	
31.—For obstructing a way or a water-course.	Two years.	The date of the obstruction.
32.—For diverting a water-course.	Do. ...	The date of the diversion.
33.—For wrongfully detaining title deeds.	Do. ...	When the title to the property comprised in the deeds is adjudged to the plaintiff, or the detainer's possession otherwise becomes unlawful.
34.—For wrongfully detaining any other movable property.	Do. ...	When the detainer's possession becomes unlawful.
35.—For specific recovery of movable property in cases not provided for by this schedule, numbers 48 and 49.	Do. ...	When the property is demanded and refused.
36.—Against a carrier for losing or injuring goods.	Do. ...	When the loss or injury occurs.
37.—Against a carrier for delay in delivering goods.	Do. ...	When the goods ought to be delivered.
38.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Do. ...	The time of the perversion.
39.—Under Act No. XII. of 1855 *(to enable executors, administrators or representatives to sue and be sued for certain wrongs)* against an executor, administrator, or other representative.	Do. ...	When the wrong complained of is done.
40.—For compensation for any wrong, malfeasance, nonfeasance or misfeasance, independent of contract and not herein specially provided for.	Do. ...	When the wrong is done or the default happens.
41.—For the recovery of a wife.	Do. ...	When possession is demanded and refused.
42.—For the restitution of conjugal rights.	Do. ...	When restitution is demanded and refused.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
	Part VI. Three years.	
43.—For trespass upon immovable property.	Three years.	When the trespass takes place.
44.—To contest an award under any of the following Regulations of the Bengal Code:— VII. of 1822, IX. of 1825, and IX. of 1833.	Do. ...	The date of the final award or order in the case.
45.—By a party bound by such award to recover any property comprised therein.	Do. ...	Do.
46.—By any person bound by an order respecting the possession of property made under Act No. XVI. of 1838, section one, clause two, or Act No. XXV. of 1861, chapter twenty-two, or Bombay Act No. V. of 1864, or by any one claiming under such person, to recover the property comprised in such order.	Do. ..	The date of the final order in the case.
47.—For lost movable property not dishonestly misappropriated or converted.	Do. ...	When the property is demanded and refused.
48.—For movable property acquired by theft, extortion, cheating, or dishonest misappropriation or conversion.	Do. ...	Do.
49.—For the hire of animals, vehicles, boats, or household furniture.	Do ...	When the hire becomes payable.
50.—For the balance of money advanced in payment of goods to be delivered.	Do. ...	When the goods ought to be delivered.
51.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Do. ..	The date of the delivery of the goods.
52.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Do. ...	The expiry of the period of credit.
53.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Do. ...	When the period of the proposed bill elapses.
54.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Do. ..	The date of the sale.
55.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Do. ...	When the work is done.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
56.—For money payable for money lent	Three years.	When the loan is made.
57.—Like suit when the lender has given a cheque for the money.	Do. ..	When the cheque is paid.
58.—For money lent under an agreement that it shall be payable on demand.	Do. ..	When the demand is made.
59.—For money payable to the plaintiff for money paid for the defendant.	Do. ..	When the money is paid.
60.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Do. ..	When the money is received.
61.—For money payable for interest upon money due from the defendant to the plaintiff.	Do. ...	When the interest becomes due.
62.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Do. ...	When the accounts are stated, unless where the debt is made payable at a future time and then when that time arrives.
63.—Upon a promise to do anything at a specified time, or upon the happening of a specified contingency.	Do. ...	At the time specified or upon the contingency happening.
64.—Against a factor for an account.	Do. ...	When the account is demanded, or where no such demand is made, when the agency terminates.
65.—On a single bond where a day is specified for payment.	Do. ...	The day so specified.
66.—On a single bond where no such day is specified.	Do. ...	The date of executing the bond.
67.—On a bond subject to a condition.	Do. ...	When the condition is broken.
68.—On a bill of exchange or promissory note payable at a fixed time after date.	Do. ...	When the bill or note falls due.
69.—On a bill of exchange payable at or after sight.	Do. ...	When the bill is presented.
70.—On a bill of exchange accepted payable at a particular place.	Do. ...	When the bill is presented at that place.
71.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Do. ...	When the fixed time expires.
72.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Do. ...	When the demand is made.
73.—By the endorsee of a bill or promissory note against the endorser.	Do. ...	The date of the endorsement.
74.—On a promissory note or bond payable by instalments.	Do. ...	The expiration of the first term of payment, as to the part then payable, and for the other parts, the expiration of the respective terms of payment.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

Description of Suit.	Period of limitation.	Time when period begins to run.
75.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one instalment the whole shall be due.	Three years.	The time of the first default, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Do. ...	The time of the delivery to the payee.
77.—On a dishonoured foreign bill where protest has been made and notice given.	Do. ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Do. ...	The date of the refusal to accept.
79.—Like suit when the bill has been dishonoured by non-acceptance and afterwards by non-payment.	Do. ...	Do.
80.—Suit on a bill of exchange or promissory note not herein expressly provided for.	Do. ...	When the bill or note becomes payable.
81.—By the acceptor of an accommodation-bill against the drawer.	Do. ...	When the acceptor pays the amount.
82.—By a surety against the principal debtor.	Do. ...	When the surety pays the creditor.
83.—By a surety against a co-surety.	Do. ...	When the plaintiff pays anything in excess of his own share.
84.—Upon any other contract to indemnify.	Do. ...	When the plaintiff is actually damnified.
85.—By an attorney or vakil for his cost of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Do. ...	The termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
86.—For compensation for damage caused by an injunction wrongfully obtained.	Do. ...	When the injunction ceases.
87.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Do. ...	The time of the last item admitted or proved in the account.
88.—On a policy of insurance when the sum assured is payable after proof of the death or loss has been given to or received by the insurers.	Do. ...	When proof of the death or loss is given or received, to or by the insurers, whether by or from the plaintiff, or any other person.
89.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Do. ...	When the insurers elect to avoid the policy.
90.—By a principal against his agent for movable property received by the latter and not accounted for.	Do. ...	When the account is demanded and refused.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
91.—Other suits by principals against agents for neglect or misconduct	Three years.	When the neglect or misconduct occurs.
92.—To cancel or set aside an instrument not otherwise provided for.	Do.	When the instrument is executed.
93.—To declare the forgery of an instrument issued, or registered, or attempted to be enforced.	Do.	The date of the issue, registration, or attempt.
94.—For property which the plaintiff has conveyed while insane.	Do.	When the plaintiff is restored to sanity and has knowledge of the conveyance.
95.—For relief on the ground of fraud.	Do.	When the fraud becomes known to the party wronged.
96.—To set aside a decree obtained by fraud.	Do.	Do.
97.—For relief on the ground of mistake in fact.	Do.	When the mistake becomes known to the plaintiff.
98.—For money paid upon an existing consideration, which afterwards fails.	Do.	The date of the failure.
99.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Do.	The date of the trustee's death, or if the loss has not then been occasioned, the date of the loss.
100.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Do.	The date of the plaintiff's advance in excess of his own share.
101.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Do.	When the right to contribution accrues.
102.—For a seaman's wages.	Do.	The end of the voyage during which the wages are earned.
103.—By a Muhammadan for exigible dower (*mu'aijal*).	Do.	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (*muwajjal*).	Do.	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Do.	The date of the receipt.
106.—For an account and a share of the profits of a dissolved partnership.	Do.	The date of the dissolution.
107.—By a Hindu manager of a joint estate for contribution in respect of a payment made by him on account of the estate.	Do.	The date of the payment.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years.	When the trees are cut down.
109.—For the profits of immovable property belonging to the plaintiff wrongfully received by the defendant.	Do. ...	When the profits are received, or where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, the date of the decree of the appellate court.
110.—For arrears of rent.	Do. ...	When the arrears become due.
111.—By a vendor of immovable property to enforce his lien for unpaid purchase-money.	Do. ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any statute or Act.	Do. ...	When the call was made.
113.—For specific performance of a contract.	Do. ...	When the plaintiff has notice that his right is denied.
114.—For the rescission of a contract.	Do. ...	When the contract is executed by the plaintiff.
115.—For the breach of any contract, express or implied, not in writing, registered, and not herein specially provided for.	Do. ...	When the contract is broken, or (where there are successive breaches) when the breach sued for occurs, or (where the breach is continuing) when it ceases.
	Part VII. Six years.	
116.—Upon a judgment obtained in a foreign country.	Six years.	The date of the judgment.
117.—On a promise or contract in writing registered.	Do. ...	When the period of limitation would begin to run against a suit brought on a similar promise or contract not registered.
118.—Suit for which no period of limitation is provided elsewhere in this schedule.	Do. ...	When the right to sue accrues.
	Part VIII. Twelve years	
119.—By an auction purchaser or any one claiming under him to avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, the estate being, by virtue of such sale, freed from incumbrances and under-tenures.	Twelve years	When the sale becomes final and conclusive.
120.—To avoid incumbrances or under-tenures in a *patni taluq* or other saleable tenure sold for arrears of rent, the taluq or tenure being, by virtue of such sale, freed from incumbrances and under-tenures.	Do. ...	Do.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
121.—Upon a judgment obtained in British India, or a recognizance.	Twelve years.	The date of the judgment or recognizance.
122.—For a legacy or for a distributive share of the movable property of a testator or intestate.	Do. ...	When the legacy or share becomes payable or deliverable.
123.—For possession of an hereditary office.	Do. ...	When the defendant, or some person through whom he claims, took possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
124.—Suit during the life of a Hindu widow by a Hindu entitled to the possession of land and her death to have an alienation made by the widow declared to be void except for her life.	Do. ...	The date of the alienation.
125.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Do. ...	Do.
126.—Like suit by a Hindu governed by the law of the Dayabhaga.	Do. ...	When the father dies.
127.—By a Hindu excluded from joint-family property to enforce a right to share therein.	Do. ...	When the plaintiff claims and is refused his share.
128.—By a Hindu for maintenance.	Do. ...	When the maintenance sued for is claimed and refused.
129.—To establish or set aside an adoption.	Do. ...	The date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father.
130.—For the resumption or assessment of rent-free land.	Do. ...	When the right to resume or assess the land first accrued: Provided that no such suit shall be maintained where the land forms part of a permanently-settled estate, and has been held rent-free from the time of the permanent settlement.
131.—To establish a periodically recurring right.	Do. ...	When the plaintiff is first refused the enjoyment of the right.
132.—For money charged upon immovable property. *Explanation.*—The allowance and fees called *malikana* and *haqqs* shall, for the purposes of this clause, be deemed to be money charged upon immovable property.	Do. ...	When the money sued for becomes due.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
133.—To recover movable property conveyed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee in good faith and for value.	Twelve years	The date of the purchase.
134.—To recover possession of immovable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value.	Do.	Do.
135.—Suit instituted in a court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged.	Do.	When the mortgagee is first entitled to possession.
136.—By a purchaser at a private sale for possession of the immovable property sold, when the vendor was out of possession at the date of the sale.	Do.	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the execution-debtor was out of possession at the date of the sale.	Do.	When the execution-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree for possession of the purchased land when he never has had possession.	Do.	The date of the sale.
139.—Like suit when the purchaser had possession, but was afterwards dispossessed.	Do.	The date of the dispossession.
140.—By a landlord to recover possession from a tenant.	Do.	When the tenancy is determined.
141.—By a remainder man, a reversioner, (other than a landlord) or a devisee, for possession of immovable property.	Do.	When his estate falls into possession.
142.—Like suit by a Hindu entitled to the possession of immovable property on the death of a Hindu widow.	Do.	When the widow dies.
143.—For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Do.	The date of the dispossession or discontinuance.
144.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Do.	When the forfeiture was incurred or the condition broken.
145.—For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Do.	When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff.

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SECOND SCHEDULE.—*continued.*

FIRST DIVISION: SUITS.—*cont.*

DESCRIPTION OF SUIT.	Period of limitation.	Time when period begins to run.
146.—For a declaration of right to an easement.	Twelve years.	When the easement ceased to be enjoyed by the plaintiff, or the persons on whose behalf he sues.
	Part IX. *Thirty years.*	
147.—Against a depositary or pawnee to recover movable property deposited or pawned.	Thirty years.	The date of the deposit or pawn, unless where an acknowledgment of the title of the depositor or pawner, or of his right of redemption, has before the expiration of the prescribed period been made in writing signed by the depositary or pawnee, or some person claiming under him; and, in such case, the date of the acknowledgment.
	Part X. *Sixty years.*	
148.—Against a mortgagee to recover possession of immovable property mortgaged.	Sixty years.	The date of the mortgage, unless where an acknowledgment of the title of the mortgagor or of his right of redemption has, before the expiration of the prescribed period, been made in writing signed by the mortgagee or some person claiming under him, and, in such case, the date of the acknowledgment. Provided that all claims to redeem arising under instruments of mortgage of immovable property situate in British Burmah, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

DESCRIPTION OF APPLICATION.	Period of limitation.	Time when period begins to run.
149.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	Sixty years.	When any art of the principal or interest was last paid on account of the mortgage debt.
150.—Any suit in the name of the Secretary of State for India in Council.	Do.	When the right to sue accrued.

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SECOND SCHEDULE.—*continued.*

SECOND DIVISION : APPEALS.

DESCRIPTION OF APPEALS.	Period of limitation.	Time when period begins to run.
151.—Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days.	The date of the decree appealed against.
152.—Under the Code of Criminal Procedure, to any court other than the High Court.	Do ...	The date of the sentence or order appealed against.
153.—Under the same Code, to the High Court.	Sixty days.	Do.
154.—Under the Code of Civil Procedure, to the High Court.	Ninety days.	The date of the decree appealed against

THIRD DIVISION : APPLICATIONS.

DESCRIPTION OF APPLICATION.	Period of limitation.	Time when period begins to run.
155.—Under the Code of Civil Procedure, to set aside an award.	Ten days ...	When the award is submitted to the court and notice of the submission has been given to the persons and in manner prescribed by the high court.
156.—By a plaintiff for an order to set aside a judgment by default.	Thirty days.	The date of the judgment.
157.—By a defendant for an order to set aside a judgment *ex parte*.	Do ...	The date of executing any process for enforcing the judgment.
158.—Under the Code of Civil Procedure, by a person dispossessed of immovable property and disputing the right of the decree holder to be put into possession.	Do ...	The date of the dispossession.
159.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale.	Do ...	The date of the sale.
160.—Complaining of resistance or obstruction to delivery of possession of immovable property sold in execution of a decree, or of dispossession in the delivery of possession to the purchaser of such property.	Do ...	The date of the resistance, obstruction, or dispossession.
161.—For re-admission of an appeal dismissed for want of prosecution.	Do ...	The date of the dismissal.
162.—For leave to appeal as a pauper.	Ninety days.	The date of the decree appealed against.
163.—To a High Court for the admission of special appeal.	Do ...	Do.
164.—For a review of judgment.	Do ...	The date of the decree.
165.—Under the Code of Civil Procedure, section three hundred and twenty-seven, that an award be filed in court.	Six months.	The date of the award.

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SECOND SCHEDULE.—*continued.*

THIRD DIVISION: APPLICATIONS.—*continued.*

Description of Application.	Period of limitation.	Time when period begins to run.
166.—For the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court or of a Revenue Court.	One year ...	The date of the decision or of taking some proceeding to enforce or keep in force the decision.
167.—For the execution of a decree or order of any Civil Court not provided for by No. 169.	Three years.	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the appellate court, or (where there has been a review of judgment) the date of the decision passed on the review, or (where the application next hereinafter mentioned has been made) the date of applying to the court to enforce, or keep in force, the decree or order, or (where the notice next hereinafter made has been issued) the date of issuing a notice under the Code of Civil Procedure section two hundred and sixteen, or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified.
168.—For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act.	Six years ...	The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the appellate court, or (where there has been a review of judgment) the date of the decision passed on the review.
169.—To enforce a judgment, decree or order of any court established by Royal Charter in the exercise of its ordinary original civil jurisdiction.	Twelve years	When a present right to enforce the judgment, decree or order accrued to some person capable of releasing the right: Provided that, when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

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A. D. 1872. ACT I.

Passed on the 15th March 1872.

THE INDIAN EVIDENCE ACT, 1872.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; it is hereby enacted as follows:— Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

I. This Act may be called "The Indian Evidence Act, 1872." Short title.

It extends to the whole of British India, and applies to all judicial proceedings in or before any court, including courts martial, but not to affidavits presented to any court or officer, nor to proceedings before an arbitrator; Extent.

and it shall come into force on the first day of September 1872: Commencement of Act.

II. On and from that day the following laws shall be repealed:— Repeal of enactments.

(1) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India:

(2) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils' Act, 1861,' in so far as they relate to any matter herein provided for; and,

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India, and not hereby expressly repealed.

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CHAPTER II.—OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

V. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Revelancy of facts forming part of same transaction.

VI. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standars at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

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(*d*) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are occasion, cause, or effect of facts in issue.

VII. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, are facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

VIII. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

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Illustrations.

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police are coming to look for the man who robbed B,'—and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B Rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees,'—and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

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(*j*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint, relating to the crime, the circumstances under which and the terms in which the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

IX. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section eight, as conduct subsequent to and affected by facts in issue.

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The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

X. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons, in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

(*a*) Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

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When facts not otherwise relevant become relevant.

XI. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.

The fact that near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant

In suits for damages, facts tending to enable court to determine amount are relevant.

XII. In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is revelant.

Facts relevant when right or custom is in question.

XIII. Where the question is as to the existence of any right or custom, the following facts are relevant—

(*a*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence.

(*b*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcileable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind,

XIV. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness,

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or of body or bodily feeling.

ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of his delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(*c*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(*d*) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A. had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing

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with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(*l*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(*m*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

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The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

Facts bearing on question whether act was accidental or intentional.

XV. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fradulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to A was not accidental.

Existence of course of business when relevant.

XVI. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that the particular letter was put in that place, are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

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ADMISSIONS.

Admissions defined.

XVII. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned.

Admission—

by party to proceeding or his agent;

XVIII. Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter.

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

XIX. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A, undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

XX. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

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Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

Relevancy of admissions against or in behalf of persons concerned.

XXI. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section thirty-two.

(2) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties if he were dead under section thirty-two clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post-mark of that day.

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The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions because they are explanatory of conduct influenced by the facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin, which he knew to be counterfeit.

He offers to prove that the asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

XXII. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

XXIII. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under Section 126.

Confession caused by inducement, threat or promise irrelevant.

XXIV. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession made to a police officer not to be used as evidence.

XXV. No confession made to a police officer shall be proved as against a person accused of any offence.

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Confession made by accused while in custody of police not to be used as evidence.

XXVI. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate, shall be proved as against such person.

So much of statement or confession made by accused as relates to fact thereby discovered, may be proved.

XXVII. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise relevant.

XXVIII. If such a confession as is referred to in section twenty-four is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

XXIX. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

XXX. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said,—"B and I murdered C." The court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—"A and I murdered C."

This statement may not be taken into consideration by the court against A, as B is not being jointly tried.

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XXXI. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

XXXII. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases :— Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant—

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. when it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty ; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind ; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him. or is made in course of business;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages. or against interest of maker;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, or gives opinion as to public right custom or matter of general interest;

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if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship between persons as to whose relationship* by blood, marriage, or adoption, the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed of deceased person;

(6) When the statement relates to the existence of any relationship* by blood, marriage, or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or relates to transaction mentioned in Section 13, clause (*a*);

(7) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section thirteen, clause (*a*).

or is made by several persons, and expresses feelings relevant to matter in question.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

* See Act XVIII. of 1872.

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(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day, is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether and when A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A at a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Evidence in a former judicial proceeding when relevant.

XXXIII. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay

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or expense which, under the circumstances of the case, the court considers unreasonable :

Provided that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or enquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

XXXIV. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant but are not sufficient without other evidence to prove the debt.

Entry in public record, made in performance of duty enjoined by law, when relevant.

XXXV. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Maps and plans when relevant.

XXXVI. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Statements as to fact of public nature contained in any Act or Notification of Government, when relevant.

XXXVII. When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of

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the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the gazette of any local Government, or in any printed paper purporting to be the *London Gazette* or the Government gazette of any colony or possession of the Queen, is a relevant fact.

Statements in law books.

XXXVIII. When the court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

What evidence to be given when statement forms part of a conversation, document, book, or series of letter or papers.

XXXIX. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

XL. The existence of any judgment, order or decree, which by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such court ought to take cognizance of such suit, or to hold such trial.

Judgments in probate, &c. jurisdiction.

XLI. A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified per-

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son but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment,* order or decree declared it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment,* order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment,* order or decree declares that it had been or should be his property.

Judgment, order, or decree between third parties when irrelevant and when not.

XLII. Judgments, orders, or decrees other than those mentioned in section forty-one are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

What judgments, &c. not relevant.

XLIII. Judgments, orders, or decrees, other than those mentioned in sections forty, forty-one and forty-two, are irrelevant, unless the existence of such judgment, order, or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case or in neither.

* See Act XVIII. of 1872.

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A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was B's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

Fraud, collusion and incompetency of court may be proved.

XLIV. Any party to a suit or other proceeding may show that any judgment, order, or decree which is relevant under section forty, forty-one, or forty-two, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

XLV. When the court has to form an opinion upon a point of foreign law, or of science or art, or as to indentity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art,* or in questions as to identity of handwriting are relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

* See Act XVIII. of 1872.

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(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

XLVI. Facts not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is whether A was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinions as to handwriting.

XLVII. When the court has to form an opinion as to the persons by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

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The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

Opinions as to existence of right or custom when relevant.

XLVIII. When the court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

XLIX. When the court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

L. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under Sections 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(*a*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

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Grounds of opinion when relevant.

LI. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases, character to prove conduct imputed irrelevant.

LII. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

LIII. In criminal proceedings, the fact that the person accused is of a good character is relevant.

Previous conviction in criminal trials relevant, but not previous bad character, except in reply.

LIV. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Character as affecting damages.

LV. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In Sections 52, 53, 54, and 55, the word "character" includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

No evidence required of fact judicially noticed.

LVI. No fact of which the court will take judicial notice need be proved.

Facts of which court must take judicial notice.

LVII. The court shall take judicial notice of the following facts:—

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(1) All laws or rules having the force of law now or heretofore in force or hereafter to be in force in any part of British India :

(2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War for Her Majesty's Army or Navy :

(4) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Council's Act, or any other law for the time being relating thereto.

Explanation.—The word "Parliament" in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland ;

2. The Parliament of Great Britain ;

3. The Parliament of England ;

4. The Parliament of Scotland ; and

5. The Parliament of Ireland.

(5.) The accession and the sign manual of the sovereign for the time being of the United Kingdom of Great Britain and Ireland ;

(6) All seals of which English courts take judicial notice ; the seals of all the courts of British India, and of all courts out of British India, established by the authority of the Governor-General or any local Government in Council : the seals of courts of admiralty and maritime jurisdiction, and of notaries public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any local Government :

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(8) The existence, title, and national flag of every state or sovereign recognized by the British crown :

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette ;

(10) The territories under the dominion of the British crown :

(11) The commencement, continuance, and termination of hostilities between the British crown and any other state or body of persons :

(12) The names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it :

(13) The rule of the road on* land or at sea.

In all these cases, and also on all matters of public history, literature, science, or art, the court may resort for its aid to appropriate books or documents of reference.

If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted.

LVIII. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings : provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

LIX. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

LX. Oral evidence must, in all cases whatever, be direct ; that is to say—

* See Act XVIII. of 1872.

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If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable;

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

Chapter V.—Of documentary evidence.

Proof of contents of documents.

LXI. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

LXII. Primary evidence means the document itself produced for the inspection of the court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of

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the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

LXIII. Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained;

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

LXIV. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

LXV. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:

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(*a*) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(*b*) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) When the original is of such a nature as not to be easily movable;

(*e*) When the original is a public document within the meaning of section seventy-four;

(*f*) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g*) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

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Rules as to notice to produce.

LXVI. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is,* or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case:

provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it:

(1) When the document to be proved is itself a notice;

(2) When from the nature of the case, the adverse party must know that he will be required to produce it;

(3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) When the adverse party or his agent has the original in court;

(5) When the adverse party or his agent has admitted the loss of the document;

(6) When the person in possession of the document is out of reach of, or not subject to, the process of the court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

LXVII. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of documents required by law to be attested.

LXVIII. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Proof where no attesting witness found.

LXIX. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the

* See Act XVIII of 1872.

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signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

LXX. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

LXXI. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of documents not required by law to be attested.

LXXII. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of handwritings.

LXXIII. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

LXXIV. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial, and executive, whether of British India or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

LXXV. All other documents are private.

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Certified copies of public documents.

LXXVI. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Production of such copies.

LXXVII. Such certified copies may be produced, in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

LXXVIII. The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any local Government or any department of any local Government,

by the records of the departments certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders, or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

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(4) The Acts of the executive or the proceedings of the legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other classes in a foreign country,

by the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a notary public or of a British consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

LXXIX. The court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified, by any officer in British India, or by any officer in any native state in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption on production of record of evidence.

LXXX. Whenever any document is produced before any court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by

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law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law and purporting to be signed by any judge or magistrate or by any such officer as aforesaid, the court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession, was duly taken.

Presumption as to gazettes.

LXXXI. The court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government gazette of any local Government, or of any colony, dependency, or possession of the British crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

LXXXII. When any document is produced to any court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any court of justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Proof of maps made for purposes of any cause.

LXXXIII. The court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws

LXXXIV. The court shall presume the genuineness of every book purporting to be printed or published under

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the authority of the Government of any country, and to contain any of the laws of that country, and reports of decisions.

and of every book purporting to contain reports of decisions of the courts of such country.

Presumption as to powers of attorney.

LXXXV. The court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary public, or any court, judge, magistrate, British consul, or vice-consul or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

LXXXVI. The court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumptions as to books and maps.

LXXXVII. The court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to photograps, machine-copies, and telegraphic messages.

LXXXVIII. The court may presume that a message, forwarded from a telegaraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

LXXXIX. The court shall presume that every document called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

Documents thirty years old.

XC. Where any document purporting or proved to be thirty years old, is produced from any custody which the

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court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connexion of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of written contract.

XCI. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any

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particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills* admitted to probate in British India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

XCII. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms:

Proviso (1)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, inti-

* See Act XVIII. of 1872.

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midation, illegality, want of due execution, want of capacity in any contracting party, want* or failure of consideration, or mistake in fact or law.

Proviso (2)—The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

Proviso (3)—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5)—Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved: provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

Proviso (6)—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, cannot be proved.

(*c*) An estate called 'the Rampore tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

* See Act XVIII. of 1872.

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(*d*) A enters into a written contract with B to work certain mines the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written —'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

XCIII. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion of evidence to explain or amend ambiguous document.

Illustrations.

(*a*) A agrees in writing to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

XCIV. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

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Illustration.

A sells to B by deed 'my estate at Rampore containing 100 bigas.' A has an estate at Rampore containing 100 bigas. Evidence may not be given of the fact that the estate meant to be sold was once situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

XCV. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B by deed 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

XCVI. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a*) A agrees to sell to B for Rs. 1,000 "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Deccan or Hyderabad in Scinde was meant.

Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.

XCVII. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X' in the occupation of Y. A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

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XCVIII. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense. Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

XCIX. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement, varying the terms of the document. Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

C. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act X of 1865 as to the construction of wills. Saving of provisions of Indian Succession Act relating to wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

CI. Whoever desires any court to give judgment as to any legal right or liability dependent on of the existence of facts which he asserts, must prove that those facts exist. Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a) A desires a court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.

A must prove the existence of those facts.

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On whom burden of proof lies.

CII. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

CIII. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the court to believe that B admitted the theft to C. A must prove the admission.

B wishes the court to believe that at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

CIV. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

CV. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same code, or in any law defining

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the offence, is upon him, and the court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact especially within knowledge.

CVI. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

CVII. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

CVIII. Provided that* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is* shifted to the person who affirms it.

Burden of proof as to partnership, tenancy and agency.

CIX. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

*See Act XVIII. of 1872.

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Burden of proof as to ownership.

CX. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

CXI. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

CXII. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

CXIII. A notification in the *Gazette of India* that any portion of British territory has been ceded to any native state, prince, or ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

CXIV. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.

Illustrations.

The court may presume—

(*a*) That a man who is in possession of stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

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(*b*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e*) That judicial and official acts have been regularly performed;

(*f*) That the common course of business has been followed in particular cases;

(*g*) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before them:—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

As to illustration (*b*)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.

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As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

CXV. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant.

CXVI. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee, or licensee.

CXVII. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

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Explanation (c)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

Who may testify.

CXVIII. All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

CXIX. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence.

Married persons in civil and criminal proceedings.

CXX. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and magistrates.

CXXI. No judge or magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior court.

(b) A is accused before the Court of Session of having given false evidence before B, a magistrate. B cannot be asked what A said, except upon the special order of the superior court.

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(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a sessions judge. B may be examined as to what occurred.

Communications during marriage.

CXXII. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of state.

CXXIII. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of state, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

CXXIV. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

CXXV. No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

CXXVI. No barrister, pleader attorney, or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal purpose;

* See Act XVIII, of 1872.

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(2) Any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, *pleader, attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney,—'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client, says to B, an attorney,—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, &c.

CXXVII. The provisions of section one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

Privilege not waived by volunteering evidence.

CXXVIII. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, *pleader, attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

* See Act XVIII. of 1872.

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Confidential communication with legal advisers.

CXXIX. No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Production of witness' title-deeds.

CXXX. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

Production of documents which another person, having possession, would be entitled to refuse to produce.

CXXXI. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

CXXXII. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend directly or indirectly, to expose such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Accomplice.

CXXXIII. An accomplice shall be a competent witness against an accused person; and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses

CXXXIV. No particular number of witnesses shall in any case be required for the proof of any fact.

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CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

CXXXV. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to Civil and Criminal Procedure respectively, and, in the absence of any such law, by the discretion of the court.

Judge to decide as to admissibility of evidence.

CXXXVI. When either party proposes to give evidence of any fact, the judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the judge may in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b*) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of property. The court may in its discretion either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

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(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief

CXXXVII. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations. Direction of re-examination.

CXXXVIII. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

CXXXIX. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

CXL. Witnesses to character may be cross-examined and re-examined.

Leading question.

CXLI. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

CXLII. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the court.

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The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

CXLIII. Leading questions may be asked in cross-examination. When they may be asked.

CXLIV. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. Evidence as to matters in writing.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

CXLV. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. Cross-examination as to previous statements in writing.

CXLVI. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend Questions lawful in cross-examination.

(1). to test his veracity;

(2). to discover who he is and what is his position in life; or

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(3). to take his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

CXLVII. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section one hundred and thirty-two shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

CXLVIII. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following considerations:—

(1). Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.

(2). Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies.

(3). Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness' character and the importance of his evidence.

(4). The court may, if it sees fit, draw from the witness' refusal to answer, the inference that the answer if given would be unfavorable.

Question not to be asked without reasonable grounds.

CXLIX. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

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Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(*b*) A pleader is informed by a person in court that an important witness is a dacoit. The informant on being questioned by the pleader gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Procedure of court in case of question being asked without reasonable grounds.

CL. If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

CLI. The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

CLII. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

CLIII. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

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Exception. 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an under-writer is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

CLIV. The court may in its discretion permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

CLV. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him:—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

See Act XVIII. of 1872.

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(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible.

CLVI. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

CLVII. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

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What matters may be proved in connection with proved statement relevant under Section 32 or 33.

CLVIII. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

CLIX. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document. Provided the court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in Section 159.

CLX. A witness may also testify to facts mentioned in any such document as is mentioned in section one hundred and fifty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

CLXI. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

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Production of documents.

CLXII. A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

The court, if it sees fit, may inspect the document, unless it refers to matters of state, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence of document called for and produced on notice.

CLXIII. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving as evidence of document production of which was refused on notice.

CLXIV. When a party refuses to produce a document which he had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

CLXV. The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the

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leave of the court to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under section one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, excepting the cases hereinbefore excepted.

Power of jury or assessors to put questions.

CLXVI In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the judge, which the judge himself might put and which he considers proper.

Chapter XI.—Of improper admission and rejection of evidence.

No new trial for rejection or improper reception of evidence.

CLXVII. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court, before which such objection is raised, that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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SCHEDULE.

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III, c. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act made in the twenty-fourth year of the reign of his present Majesty (intituled, An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies), as requires the servants of the East India Company to deliver inventories to their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section thirty-eight so far as it relates to courts of justice in the East Indies.
Stat. 14 & 15 Vic., c. 99.	To amend the Law of Evidence.	Section eleven, & so much of section nineteen as relates to British India.
Act XV. of 1852.	To amend the Law of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section nineteen.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section two hundred and thirty seven.
Act I. of 1868.	The General Clauses Act, 1868.	Sections seven & eight.

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A. D. 1872. ACT III.

AN ACT *to provide a Form of Marriage in certain cases.*
Passed on the 22nd March 1872.

Preamble.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful; it is hereby enacted as follows:—

Local extent. Commencement.

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

Conditions upon which marriages under Act may be celebrated.

II. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu, or the Muhammadan, or the Parsi, or the Buddhist, or the Sikh, or the Jaina religion, upon the following conditions:—

(1) Neither party must, at the time of the marriage, have a husband or wife living:

(2) The man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4) The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than

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that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor of the other.

Appointment of marriage registrars.

III. The local Government may appoint one or more registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Marriages under Act III. of 1872,' and is hereinafter referred to as 'the registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

One of the parties to intended marriage to give notice to registrar.

IV. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the registrar, before whom it is to be solemnized.

The registrar to whom such notice is given must be the registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

Notice to be filed and copy entered in the marriage notice book.

V. The registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to marriage.

VI. Fourteen days after notice of an intended marriage has been given under section four, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3), or (4) of section two.

The nature of the objection made shall be recorded in writing by the registrar in the register, and shall, if neces-

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sary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

Procedure on receipt of objection.

VII. On receipt of such notice of objection, the registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a court of competent jurisdiction open at the time, or, if there be no such court open at the time, until the lapse of fourteen days from the opening of such court.

Objector may file suit.

The person objecting to the intended marriage may file a suit in any civil court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two.

Certificate of filing of suit to be lodged with registrar.

VIII. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the registrar within fourteen days from the receipt of notice of objection, if there be a court of competent jurisdiction open at the time, or, if there be no such court open at the time, within fourteen days of the opening of such court, the marriage shall not be solemnized till the decision of such court has been given, and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the appellate court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, such marriage may be solemnized.

If the decision of such court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two, the marriage shall not be solemnized.

Court may fine when objection not reasonable.

IX. Any court in which any such suit as is referred to in section seven is filed, may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine

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not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

X. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the registrar.

Marriage how to be solemnized.

XI. The marriage shall be solemnized in the presence of the registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the registrar and witnesses, 'I [*A*], take thee, [*B*], to be my lawful wife (*or* husband).'

Place where marriage may be solemnized.

XII. The marriage may be celebrated either at the office of the registrar or at such other place, within reasonable distance of the office of the registrar, as the parties desire. Provided that the local Government may prescribe the conditions under which such marriages may be solemnized at places other than the registrar's office, and the additional fees to be paid thereupon.

Form of certificate.

XIII. When the marriage has been solemnized, the registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III. of 1872,' in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Fees.

XIV. The local Government shall prescribe the fees to be paid to the registrar for the duties to be discharged by him under this Act.

The registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said marriage certificate book shall at all reasonable times be open for inspection, and shall be admissible as

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evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the registrar on the payment to him by the applicant of a fee to be fixed by the local Government for each such extract.

Penalty on married person marrying again under Act.

XV. Every person who, being at the time married, procures a marriage of himself to be solemined under this Act, shall be deemed to have committed an offence under section four hundred and ninety-four or section four hundred and ninety-five of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

Punishment of bigamy.

XVI. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections four hundred and ninety-four and four hundred and ninety-five of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Indian Divorce Act to apply.

XVII. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section two of this Act.

Law to apply to issue of marriages under Act.

XVIII. The issue of marriages solemnized under this Act, shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section two of this Act shall apply to them.

Saving of marriages solemnized otherwise than under Act.

XIX. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but if the validity of any such mode shall hereafter come into question before any court, such question shall be decided as if this Act had not been passed.

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Registry of marriages contracted before passing of Act.

XX. All persons who have heretofore contracted marriages in the presence of at least two witnesses, according to any form whatever, may at any time, previous to the first day of January 1873, have such marriages registered under this Act, and such marriages shall thereupon be deemed to be and to have been as valid as if they had been contracted and solemnized under this Act: provided that persons who have such marriages registered under this section must, on such registry, sign a declaration in the form given in the fourth schedule to this Act.

No marriage shall be registered under this section unless conditions (1), (3) and (4) of section two were complied with; and no such marriage shall be registered under this section if, during its continuance, either party has contracted a subsequent marriage.

Penalty for signing declarations or certificates containing false statements.

XXI. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section one hundred and ninety-nine of the Indian Penal Code.

FIRST SCHEDULE.

(*See Section* 4.)

NOTICE OF MARRIAGE.

To a Registrar of Marriages under Act III. of 1872 for the District.

I hereby give you notice that a marriage under Act III. of 1872 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.
A B	Unmarried. Widower.	Landowner.	Of full age.	.....	23 days.
C D	Spinster.	.....	Minor.	.....	.....

Witness my hand, this day of 187 .

(Signed) *A. B.*

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SECOND SCHEDULE.

(*See Section* 10.)

Declaration to be made by the Bridegroom.

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.

3. I have completed my age of eighteen years :

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section two of Act III. of 1872, render a marriage between us illegal ;

[*And when the bridegroom has not completed his age of twenty-one years*] :

5. The consent of my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked.]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A. B.* (the bridegroom.)

Declaration to be made by the Bride.

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.

3. I have completed my age of fourteen years :

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity, which would according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clauses (4) of section two of Act III. of 1872, render a marriage between us illegal.

[*And when the bride has not completed her age of twenty-one years, unless she is a widow*] :

5. The consent of *M N* my father [or guardian, *as the case may be*] has been given to a marriage between myself and *A B*, and has not been revoked.]

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6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

Signed in our presence by the abovenamed *A B* and *C D*:

G H,
I J,
K L, } (three witnesses.)

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow*]:

Signed in my presence and with my consent by the above *A B* and *C D*:

L N, the father [*or* guardian] of the abovenamed *A B* [*or CD, as the case may be.*]

(Countersigned) *E F*,
Registrar of Marriages under Act III. of 1872 *for the District of*

Dated the day of 18 .

THIRD SCHEDULE.

(*See Section* 13.)

Registrar's Certificate.

I, *E F*, certify that on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,
Registrar of Marriages under Act III. of 1872 *for the District of*

(Signed) *A B*,
C D,

G H,
I J,
K L, } (three witnesses.)

Dated the day of 18

FOURTH SCHEDULE.

(*See Section* 20.)

Declaration to be made by the Husband.

I, *A B*, hereby declare as follows:—

1. I was married to *C D* at (*place*), on or about (*date*) in the presence of (*two witnesses*):

2. I was, at the time of my marriage to my wife *C D*, unmarried;

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3. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion;

4. I have not contracted any subsequent marriage;

5. I am not related to *C D* [*the wife*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section two of Act III. of 1872, render a marriage between us illegal;

[*And when the bridegroom had not completed his age of twenty-one years*]:

6. The consent of my father [*or* guardian, *as the case may be*] had been given to a marriage between myself and *C D*, and had not been revoked.

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B* (the husband.)

Declaration to be made by the Wife.

I, *C D*, hereby declare as follows:—

1. I was married to *A B* at (*place*), on or about (*date*) in the presence of (*two witnesses*);

2. I was, at the time of my marriage to my husband *A B*, unmarried:

3. I did not at such time profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion:

4. I have not contracted any subsequent marriage:

5. I am not related to *A B* [*the husband*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section two of Act III. of 1872, render a marriage between us illegal.

[*And when the bride had not, at the time of her marriage, completed her age of twenty-one years, unless she was then a widow*]:

6. The consent of *M N* my father [*or* guardian, *as the case may be*] had at such time been given to a marriage between myself and *A B*, and had not been revoked.]

7. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

Signed in our presence by the abovenamed *A B* and *C D*.

G H, } (*two witnesses*)
I J, }

(Countersigned) *E F*,
Registrar of Marriages under Act III. of 1872 *for the District of*

Dated the day of 18

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A. D. 1872. ACT VI.

AN ACT *to amend the Law relating to Oaths and Affirmations.*

Passed on the 5th April 1872.

WHEREAS it is expedient to amend the law relating to oaths and affirmations; it is enacted as follows:— Preamble.

I. This Act may be called "The Oaths Act, 1872." Short title.

II. It extends to British India, and applies to all oaths or affirmations taken or made by or administered to British subjects in Native Indian States, Extent.

and it shall come into force on the passing thereof. Commencement.

III. Every person who may by law be sworn or called upon to make a solemn affirmation, in any capacity whatever, may, if he objects to such oath or solemn affirmation, make in place thereof a simple affirmation to the same effect, omitting the words "So help me God," "In the presence of Almighty God," or other expressions of the same nature. Persons liable to be sworn may, if they object to oath, make simple affirmation.

IV. If any party to, or witness in any judicial proceeding offers to give evidence on oath in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit, tender such oath to him. Powers of court as to certain oaths when tendered by parties or witnesses.

If any party to any proceeding offers to be bound by any such oath as is mentioned in the first paragraph of this section, if such oath is taken by the other party to, or by any witness in such proceeding, the court may, if it thinks fit, ask such party or witness whether he will take the oath or not.

If such party or witness accepts such oath, the court may proceed to administer it, or if it is of such a nature that it may be more conveniently taken out of court, the court may issue a commission to any person to administer it, and authorize such person to take the evidence of the person to be sworn and return it to the court.

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The evidence so given shall, as against the person who offered to be bound by it, be conclusive proof of the matter stated.

If the party or witness refuses to take the oath, he shall not be compelled to take it, but the court shall record, as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would take it, and that he refused it, together with any reason which he may assign for his refusal.

Proceedings and evidence not invalidated by omission of oath or irregularity.

V. No omission to take any oath or to make any solemn or simple affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place.

Saving of certain oaths and affirmations.

VI. Nothing in this Act shall apply to oaths or affirmations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not the power to repeal.

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A. D. 1872. ACT IX.

Passed on the 25th April 1872.

THE INDIAN CONTRACT ACT.

Preamble.

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.

I. This Act may be called "The Indian Contract Act, 1872."

Extent. Commencement.

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

Enactments repealed.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the 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.

Interpretation clause.

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

Proposal.

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

Promise.

(*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:

Promisor and promisee.

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

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Consideration.

(*d*) When, at the desire of the promiser, 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:

Agreement.

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement:

Reciprocal promises.

(*f*) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises:

Void agreement.

(*g*) An agreement not enforceable by law is said to be void:

Contract.

(*h*) An agreement enforceable by law is a contract:

Voidable 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:

Void 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.

Communication, acceptance and revocation of proposals.

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

Communication when complete.

IV. 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.

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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. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

V. 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.

Illustration.

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 an time before or at the moment when B posts his letter of acceptance, but not afterwards.

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

Revocation how made

VI. 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;

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(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.

Acceptance must be absolute.

VII. 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 in 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.

Acceptance by performing conditions or receiving consideration.

VIII. 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.

Promises, express and implied.

IX. In so far as the proposal 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.

What agreements are contracts.

X. 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

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presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

XI. 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.

What is a sound mind for the purpose of contracting.

XII. 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.

"Consent" defined.

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

"Free consent" defined.

XIV. 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, subject to the provisions of sections twenty, twenty-one and twenty-two.

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.

"Coercion" defined.

XV. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the

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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.

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 criminal 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 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

XVI. 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.

"Fraud" defined.

XVII. 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 ;

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(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, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is in itself equivalent to speech.

Illustrations.

(*a*) A sells by auction to B 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.

XVIII. 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, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

XIX. 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.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the

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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 so caused, 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 erroneously to believe 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 undervalue. 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.

Agreement void where both parties are under mistake as to matter of fact.

XX. 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 deemed a mistake as to a matter of fact.

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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.

Effect of mistakes as to law.

XXI. 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.

Contract not voidable merely because of mistake of one party as to matter of fact.

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

What considerations and objects are lawful and what not.

XXIII. 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.

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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 all 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 agrees to let 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.

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VOID AGREEMENTS.

Agreements void, of considerations and objects unlawful in part.

XXIV. If any part of a single consideration for one or more objects, or 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.

Agreement without consideration void—

XXV. An agreement made without consideration is void unless—

unless it is in writing and registered,

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances and is made on account of natural love and affection between parties standing in a near relation to each other, or unless—

or is a promise to compensate for something done,

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

or is a promise to pay a debt barred by limitation law.

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

Explanation 2.—An agreement to which the consent of the promiser is freely given, is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promiser was freely given.

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Illustrations.

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

(*b*) A, for natural love and affection, promises to give his son B Rs. 1,000; A puts his promise 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 signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

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

Agreement in restraint of trade void.

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

Saving of agreement not to carry on business of which good-will is sold;

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.

of agreement between partners prior to dissolution;

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 preceding exception.

or during continuance of partnership.

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.

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XXVIII. 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. Agreements in restraint of legal proceedings void.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects, shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute to referred. Saving of contract to refer to arbitration dispute that may arise.

When such a contract 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 subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit. Suits barred by such contracts.

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. Saving of contract to refer questions that have already arisen.

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

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 Ramnagar.' There is no uncertainty here to make the agreement void.

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

(f) A agrees to sell to 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.

Agreements by way of wager void.

XXX. Agreements by way of wager are void and no suit shall be brought for recovering anything 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.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294 A of the Indian Penal Code not to be affected.

Nothing in this section shall be deemed to legalise any transaction connected with horse-racing, to which the provisions of Section 294 A of the Indian Penal Code apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

"Contingent contract" defined.

XXXI. 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.

Illustration.

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

Enforcement of contracts contingent on an event happening.

XXXII. Contigent 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 becomes 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.

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(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.

Enforcement of contracts contingent on an event not happening.

XXXIII. 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.

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.

When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person.

XXXIV. 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 such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

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.

When contracts become void which are contingent on happening of specified event within fixed time.

XXXV. 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 the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within 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 fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

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

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(*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.

Agreements contingent on impossible events void.

XXXVI. 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.

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.

Obligation of parties to contracts.

XXXVII. The parties to a contract must either perform, or offer to perform, their respective promises, 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 promisers in case of the death of such promisers 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.

Effect of refusal to accept offer of performance.

XXXVIII. Where a promiser has made an offer of performance to the promisee, and the offer has not been accepted, the promiser 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:

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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 by his promise to do:

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 promiser is bound by his promise to deliver.

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

Illustration.

A contracts to deliver to B at his warehouse, on the first March 1873, 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 on the appointed day, 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.

Effect of refusal of party to perform promise wholly.

XXXIX. 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 a contract 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 A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract 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, A wilfully absents herself. With the assent of B, A 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.

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BY WHOM CONTRACTS MUST BE PERFORMED.

Person by whom promise is to be performed.

XL. 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 promiser himself, such promise must be performed by the promisee. In other cases, the promiser or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A 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.

Effect of accepting performance of third person.

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

Devolution of joint liabilities.

XLII. 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.

Any one of joint promisers may be compelled to perform.

XLIII. 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 such joint promisers to perform the whole of the promise.

Each promiser may compel contribution.

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

Sharing of loss by default in contribution.

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

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal payments made

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by the surety on behalf of the principal, or entitle the principal to recover any thing from the surety on account of payments made by the principal.

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 any thing, 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 surties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint contractor.

XLIV. Where two or more persons have made a joint promise, a release of one of such joint promisers by the promisee does not discharge the other joint promiser or joint promisers; neither does it free the joint promiser so released from responsibility to the other joint promiser or joint promisers.

Devolution of joint rights.

XLV. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from 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.

Time for performance of promise where no

XLVI. Where, by the contract, a promiser is to perform his promise without application by the promisee, and no

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time is specified and no application to be made.

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.

Time and place for performance of promise where time is specified and no application to be made.

XLVII. When a promise is to be performed on a certain day, and the promiser has undertaken to perform it without application by the promisee, the promiser 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 first 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.

Application for performance to be at proper time and place.

XLVIII. When a promise is to be performed on a certain day, and the promiser has not undertaken to perform it without application by the promisee, 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.

Place for performance of engagement where no application to be made and no place fixed.

XLIX. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promiser 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.

Performance in manner or at time prescribed or sanctioned by promisee.

L. 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

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Afterwards, and before A knows of the transfer, C fails. There has been 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 operates 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.

PERFORMANCE OF RECIPROCAL PROMISES.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

LI. When a contract consists of reciprocal promises to be simultaneously performed, no promiser 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.

(*b*) 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.

Order of performance of reciprocal promises.

LII. 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 for 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

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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.

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

LIII. 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 sustain 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.

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

LIV. 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 promiser of the promise last mentioned fails to perform it, such promiser 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 sustain by the non-performance of the contract.

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 the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's 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-performance 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

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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.

Effect of failure to perform at fixed time in contract in which time is essential.

LV. When a 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 any such thing at or before the specified time, 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.

Effect of such failure when time is not essential.

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 do such thing at or before the specified time; but the promisee is entitled to compensation from the promiser for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promiser'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 the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisee of his intention to do so.

Agreement to do impossible act void.

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

Contract to do impossible act or one which afterwards becomes impossible or illegal when void.

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

Compensation for loss on non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or with reasonable diligence might have known, and which the promisee did not know to be impossible or unlawful, such promiser must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

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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. A's 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 A is too ill to act. The contract to act on those occasions becomes void.

Where there are promises to do things legal and also other things illegal, the former are a contract, the latter a void agreement.

LVII. Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

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, is a contract.

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

In alternative promise, one branch being illegal, legal branch alone enforceable.

LVIII. 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.

Application of payment where debt to be discharged is indicated.

LIX. Where a debtor, 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.

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Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first 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.

Application of payment where debt to be discharged is not indicated.

LX. 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 debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party makes appropriation.

LXI. 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 barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

CONTRACTS WHICH NEED NOT BE PERFORMED.

Contracts changed, rescinded or altered need not be performed.

LXII. 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.

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 B a mortgage of his (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.

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Promisee may dispense with or remit performance of promise.

LXIII. 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 such performance, or may accept instead of it any satisfaction which he thinks fit.

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.

Consequences of rescission of a voidable contract.

LXIV. 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 promiser. 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.

Obligation of person who has received advantage under void agreement or contract that becomes void.

LXV. 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 B'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 first of May. A delivers 130 maunds only befor that day, and

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none after. B retains the 130 maunds after the first 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 a hundred 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 B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

LXVI. 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.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

LXVII. If any promisee neglects or refuses to afford the promiser reasonable facilities for the performance of his promise, the promiser 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 RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

LXVIII. If a person incapable of entering into a contract, or any one whom 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 lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

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(*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.

Reimbursement of person paying money due by another in payment of which he is interested.

LXIX. 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.

Illustration.

B holds land in Bengal on a lease granted by A, the zamindar. 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.

Obligation of person enjoying benefit of non-gratuitous act.

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

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.

Responsibility of finder of goods.

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

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

LXXII. A person to whom money has been paid or anything delivered by mistake, or under coercion, must repay or return 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.

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CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

LXXIII. When a contract has been broken, 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.

Compensation for failure to discharge obligation resembling those created by contract.

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 such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, 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 first 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

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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, 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 avoidable 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 it 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.

(*f*) 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.

(*g*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first 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 first of January.

(*h*) 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.

(*i*) 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 through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron

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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 B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) 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 is 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.

(*l*) A, a builder, contracts to erect and finish a house by the first 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 first of January, it falls down and has to be re-built 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 to C.

(*m*) 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.

(*n*) 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.

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

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(*p*) 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.

(*q*) A contracts to sell and deliver to B, on the first 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 after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, 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.

(*r*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half his passage-money. The ship does not sail on the first 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.

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

LXXIV. 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.

EXCEPTION.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law or under the orders of the Government of India or of any local Government, gives any bond for the performance of any public duty or act, in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any

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public duty or promise to do an act in which the public are interested.

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.

LXXV. 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. Party rightfully rescinding contract entitled to compensation.

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.

CHAPTER VII.

SALE OF GOODS.

When property in goods sold passes.

LXXVI. In this chapter, the word 'goods' means and includes every kind of movable property. "Goods" defined.

LXXVII. 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. "Sale" defined.

LXXVIII. 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 of delivery of the

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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 is 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 B 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 first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first 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.

Transfer of ownership of thing sold which has yet to be ascertained, made, or finished.

LXXIX. 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.

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.

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LXXX. 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.

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

Illustration.

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.

LXXXI. 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.

Completion of 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 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.

LXXXII. 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.

Completion of sale when goods are unascertained at date of contract.

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.

LXXXIII. 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 is complete.

Ascertainment of goods by subsequent appropriation.

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Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar and gives notice to B that the hogsheads 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.

Ascertainment of goods by seller's selection.

LXXXIV. 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 that contract, and by his doing so, the goods are ascertained.

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.

Transfer of ownership of movable property when sold together with immovable.

LXXXV. Where an agreement is made for the sale of immovable and movable property combined, the ownership of the movable property does not pass before the transfer of the immovable property.

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.

Buyer to bear loss after goods have become his property.

LXXXVI. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(*a*) B offers, and A accepts, 100 rupees for a stack of firewood 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 1000 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.

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LXXXVII. 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 A's 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.

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

LXXXIX. 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 price not fixed by contract.

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

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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.

Delivery how made.

XC. 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.

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 price of the oil. 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.

Effect of delivery to wharfinger or carrier.

XCI. 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 custody or delivery of the goods.

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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.

Effect of part-delivery.

XCII. 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, and 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.

Illustrations

(*a*) A ship arrives in a harbour laden with a cargo consigned 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 B 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.

Seller not bound to delivery until buyer applies for delivery.

XCIII. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Place of delivery.

XCIV. In the absence of any special 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.

SELLER'S LIEN.

Seller's lien.

XCV. Unless a contrary intention appears by the contract, a seller has a lien on sold goods, as long as they remain

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in his possession, and the price or any part of it remains unpaid.

Lien where payment to be made at a future day, but no time fixed for delivery.

XCVI. 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.

'Insolvency' defined.

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 becomes insolvent. A may retain the goods for the price.

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

XCVII. 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.

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 till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer.

XCVIII. 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.

STOPPAGE IN TRANSIT.

Power of seller to stop in transit.

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

When goods are to be deemed in transit.

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

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course 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 Poona, orders goods of A at Bombay. A sends them to Poona by C, a carrier appointed by B. The goods arrive at Poona, 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.

Continuance of right of stoppage.

CI. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling 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.

Cessation of right on assignment, by buyer, of document showing title.

CII. 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.

Illustrations.

(*a*) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and while the

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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.

How seller may stop where instrument of title assigned to secur especific advance.

CIII. Where a bill of lading or other instrument of title to any goods is assigned by the buyer 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.

Illustrations.

(*a*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these 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 these 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.

Stoppage how effected.

CIV. 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.

Notice of seller's claim.

CV. 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.

Right of seller on stoppage.

CVI. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

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Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B comes 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.

Re-sale on buyer's failure to perform.

CVII. 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.

Title conveyed by seller of goods to buyer.

CVIII. 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 of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to 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 other 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 of such joint-owner 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.

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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 person in possession or those 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, entrusts 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 Hindu 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 *bonâ fide*. The property in the cow is transferred to D.

(*e*) A by a misrepresentation not amounting to cheating, induces 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 B has sustained by being prevented from rescinding the contract.

(*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.

Seller's responsibility for badness of title.

CIX. 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 the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

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CX. An implied warranty of goodness or quality may be established by the custom of any particular trade. Establishment of implied warranty of goodness or quality.

CXI. On the sale of provisions, there is an implied warranty that they are sound. Warranty of soundness implied on sale of provisions.

CXII. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample. Warranty of bulk implied on sale of goods by sample.

CXIII. 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. Warranty implied where goods are sold as being of a certain denomination.

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 Murshedabad 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 the 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.

CXIV. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned 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.

CXV. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose. Warranty on 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

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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.

Seller when not responsible for latent defects.

CXVI. 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.

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.

Buyer's right on breach of warranty.

CXVII. 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.

Illustration.

A sells and delivers to B a horse, warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained.

CXVIII. 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.

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Illustrations.

(*a*) A agrees to sell, and, without application on B's part, delivers 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; B afterwards uses two sacks, and sells one. He cannot now rescind 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 order. 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.

When buyer may refuse to accept if goods not ordered are sent with goods ordered.

CXIX. When the seller sends to the buyer 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.

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.

Effect of wrongful refusal to accept.

CXX. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Right of seller as to rescission on failure of buyer to pay price at time fixed.

CXXI. 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.

Sale and transfer of lots sold by auction.

CXXII. 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.

Effect of use by seller of pretended biddings to raise price.

CXXIII. 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.

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CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

Contract of indemnity defined.

CXXIV. A contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself, or by the conduct of any other person, is called a contract of indemnity.

Illustration.

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.

Rights and liabilities of indemnity-holder when sued.

CXXV. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promiser—

(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 promiser, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promiser 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 promiser and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promiser authorized him to compromise the suit.

Contract of 'guarantee,' 'surety,' 'principal debtor,' and 'creditor.'

CXXVI. 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.

Consideration for guarantee.

CXXVII. 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.

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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.

Surety's liability.

CXXVIII. The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

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.

Continuing guarantee.

CXXIX. A guarantee which extends to a series of transactions, is called a 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 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to 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 payment to B of the price of five sacks of flour to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C 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.

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Revocation of cotinuing guarantee.

CXXX. A continuing guarantee may, at any time be revoked by the surety as to future transactions, by notice to the creditor.

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.

Revocation of continuing guarantee by surety's death.

CXXXI. 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.

Liability of two persons primarily liable, not affected by a private arrangement between them as to suretyship.

CXXXII. 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, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

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.

Discharge of surety by variance in terms of contract.

CXXXIII. 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.

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 for one-fourth of the losses on over-drafts. B allows a customer to overdraw, and

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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 by the change from future liability under his guarantee, 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 duly 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 first 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.

Discharge of surety by release or discharge of principal debtor.

CXXXIV. 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.

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.

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(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.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

CXXXV. 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.

Surety not discharged when agreement made with a third person to give time to principal debtor.

CXXXVI. 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.

Creditor's forbearance to sue does not discharge surety.

CXXXVII. 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.

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.

Release of one co-surety does not discharge others.

CXXXVIII. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

CXXXIX. 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.

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.

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(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B and 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 discharge of the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. 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.

Rights of surety on payment or performance.

CXL. 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.

Surety's right to benefit of creditor's securities.

CXLI. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship 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.

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, a 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.

Guarantee obtained by misrepresentation invalid.

CXLII. 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.

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Guarantee obtained by concealment invalid.

CXLIII. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

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.

Guarantee on agreement that creditor shall not act on it until co-surety joins.

CXLIV. 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.

Implied promise to indemnify surety.

CXLV. 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.

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 him 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 for 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.

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Co-sureties liable to contribute equally.

CXLVI. 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.

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.

Liability of co-sureties bound in different sums.

CXLVII. Co-sureties, who are bound in different sums, are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely 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, namely 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, namely 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. A, B and C have to pay each the full penalty of his bond.

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CHAPTER IX.

OF BAILMENT.

'Bailment,' 'bailor,' and 'bailee' defined.

CXLVIII. 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.

Delivery to bailee how made.

CXLIX. 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.

Bailor's duty to disclose faults in goods bailed.

CL. 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.

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.

Care to be taken by bailee.

CLI. 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.

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CLII. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151. Bailee when not liable for loss, etc. of thing bailed.

CLIII. 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. Termination of bailment by bailee's act inconsistent with conditions.

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.

CLIV. 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. Liability of bailee making unauthorized use of goods bailed.

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.

CLV. 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. Effect of mixture with bailor's consent, of his goods with goods of bailee.

CLVI. 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 or divided, 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. Effect of mixture without bailor's consent, when the goods can be separated.

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

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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 the bales and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

CLVII. 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.

Illustrations.

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.

Re-payment by bailor of necessary expenses.

CLVIII. 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.

Restoration of goods bailed gratuitously.

CLIX. 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, made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent 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.

Return of goods bailed on expiration of time or accomplishment of purpose.

CLX. 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.

Bailee's responsibility when goods are not duly delivered or tendered.

CLXI. 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.

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CLXII. A gratuitous bailment is terminated by the death either of the bailor or of the bailee. Termination of gratuitous bailment by death.

CLXIII. 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. Bailor entitled to increase or profit from 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*.

CLXIV. 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. Bailor's responsibility to bailee.

CLXV. 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. Bailment by several joint owners.

CLXVI. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery. Bailee not responsible on re-delivery to bailor without title.

CLXVII. If a person, other than the bailor, 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. Right of third person claiming goods bailed.

CLXVIII. 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 may 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 may sue for such reward, and may retain the goods until he receives it. Right of finder of goods.

May sue for specific reward offered.

CLXIX. 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— When finder of thing commonly on sale may sell it.

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(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.

Bailee's particular lien.

CLXX. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due 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.

General lien of bankers, factors, wharfingers, attorneys and policy brokers.

CLXXI. 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.

BAILMENTS OF PLEDGES.

'Pledge,' 'pawner,' and 'pawnee' defined.

CLXXII. 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 pawner. The bailee is called the pawnee.

Pawnee's right of retainer.

CLXXIII. 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.

Pawnee not to retain for debt or promise other than that for which goods pledged.

CLXXIV. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for

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which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee. Presumption in case of subsequent advances.

CLXXV. The pawnee is entitled to receive from the pawner extraordinary expenses incurred by him for the preservation of the goods pledged. Pawnee's right as to extraordinary expenses incurred.

CLXXVI. If the pawner makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawner upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawner reasonable notice of the sale. Pawnee's right where pawner makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawner 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 pawner.

CLXXVII. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawner makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default. Defaulting pawner's right to redeem.

CLXXVIII. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or 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: Pledge by possessor of goods or documentary title to goods.

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.

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Pledge where pledger has only a limited interest.

CLXXIX. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.

Suits by bailor or bailee against wrong-doers.

CLXXX. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee 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 bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

CLXXXI. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

'Agent' and 'principal' defined.

CLXXXII. 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.

Who may employ agent.

CLXXXIII. 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.

Who may be an agent.

CLXXXIV. 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.

Consideration not necessary.

CLXXXV. No consideration is necessary to create an agency.

Agent's authority may be express or implied.

CLXXXVI. The authority of an agent may be express or implied.

Definitions of express and implied authority.

CLXXXVII. An authority is said to be express when it is given by words spoken or written. An authority is

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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 purpose 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.

Extent of agent's authority.

CLXXXVIII. An agent, having an authority to do an 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 a business, has authority to do every lawful thing necessary for the purpose 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 shipbuilder. B may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

Agent's authority in an emergency.

CLXXXIX. 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*) An agent for sale may have goods repaired if it be necessary.

(*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 to Cuttack without spoiling.

SUB-AGENTS.

When agent cannot delegate.

CXC. 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

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trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

'Sub-agent' defined.

CXCI. A sub-agent is a person employed by, and acting under control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

CXCII. 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.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent:

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

CXCIII. 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; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency.

CXCIV. 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 money 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.

Agent's duty in naming such person.

CXCV. 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;

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and, if he does this, he is not 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 the 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.

CXCVI. 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.

Right of person as to acts done for him without his authority.

Effect of ratification.

CXCVII. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

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.

CXCVIII. 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.

CXCIX. A person ratifying any authorized 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.

CC. 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.

Ratification of unauthorized act cannot injure third person.

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Illustrations.

(*a*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*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.

Termination of agency.

CCI. 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.

Termination of agency, where agent has an interest in subject-matter.

CCII. 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 himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority.

CCIII. 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 where authority has been partly exercised.

CCIV. 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.

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 B's hands. B buys

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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.

Compensation for revocation by principal or renunciation by agent.

CCV. 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.

Notice of revocation or renunciation.

CCVI. Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

CCVII. 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.

When termination of agent's authority takes effect as to agent and as to third persons.

CCVIII. The termination of the authority of an agent does not, so far as 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 B's 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 for him some cotton lying in a warehouse in Bombay, 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.

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(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.

Agent's duty on termination of agency by principal's death or insanity.

CCIX. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

CCX. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

AGENT'S DUTY TO PRINCIPAL.

Agent's duty in conducting principal's business.

CCXI. An agent is bound to conduct the business of his principal according to the directions 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 B 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.

Skill and diligence required from agent.

CCXII. An agent is bound to conduct the business of the agency with 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,

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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 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 enquiries 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.

Agent's accounts.

CCXIII. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

CCXIV. 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.

Right of principal when agent deals on his own account in business of agency without principal's consent.

CCXV. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his 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.

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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 over 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.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

CCXVI. 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.

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.

Agent's right of retainer out of sums received on principal's account.

CCXVII. 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 duty to pay sums received for principal.

CCXVIII. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

CCXIX. In the absence of any special contract, 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.

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CCXX. 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 he has misconducted. Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to 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 A.

(*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.

CCXXI. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable 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.

PRINCIPAL'S DUTY TO AGENT.

CCXXII. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. Agent to be indemnified against consequences of lawful acts

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.

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Agent to be indemnified against consequences of acts done in good faith.

CCXXIII. 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.

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 which he is compelled to pay to C in consequence of obeying A's directions.

(*b*) B, at the 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.

Non-liability of employer of agent to do a criminal act.

CCXXIV. 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.

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.

Compensation to agent for injury caused by principal's neglect.

CCXXV. 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. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

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EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

Enforcement and consequences of agent's contracts.

CCXXVI. 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.

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.

Principal how far bound when agent exceeds authority.

CCXXVII. When an agent does more than he is authorized to do, and when 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, authorises 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.

Principal not bound when excess of agent's authority is not separable.

CCXXVIII. Where an agent does more than he is 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 authorises 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.

Consequences of notice given to agent.

CCXXIX. 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,

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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 setoff 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.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to contrary.

CCXXX. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

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.

Rights of parties to a contract made by agent not disclosed.

CCXXXI. 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, as against the principal, the same rights 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.

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CCXXXII. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract can only obtain such performance 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.

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.

CCXXXIII. 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.

Right of person dealing with 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.

CCXXXIV. 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.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

CCXXXV. 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 alleged 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.

Liability of pretended agent.

CCXXXVI. 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.

CCXXXVII. 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 obli-

Liability of principal inducing belief that agent's unauthorized acts were authorized.

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gations if he has by his words or conduct induced such third 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.

Effect on agreement of misrepresentation or fraud by agent.

CCXXXVIII. 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 such misrepresentations or fraud had been made or committed by the principals; but misrepresentations made, or 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 authorised by B to make. 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 consignor.

CHAPTER XI.

OF PARTNERSHIP.

Partnership defined.

CCXXXIX. '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.

Firm defined.

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.

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(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.

Lender not a partner by advancing money for share of profits.

CCXL. 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 share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner or deceased partner's representative.

CCXLI. 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.

Servant or agent remunerated by share of profits, not a partner.

CCXLII. 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.

Widow or child of deceased partner receiving annuity out of profits, not a partner.

CCXLIII. 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.

Person receiving portion of profits for sale of good-will, not a partner.

CCXLIV. 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.

Responsibility of person leading another

CCXLV. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a

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to believe him a partner.

partner in a particular firm, is responsible to him as a partner in such firm.

Liability of person permitting himself to be represented as a partner.

CCXLVI. Any one, consenting to allow himself to be represented as a partner, is liable, as such, to third persons who, on the faith thereof, gives credit to the partnership.

Minor partner not personally liable, but his share is.

CCXLVII. 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.

Liability of minor partner on attaining majority.

CCXLVIII. 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.

Partner's liability for debts of partnership.

CCXLIX. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; 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.

Partner's liability to third person for neglect or fraud of co-partner.

CCL. 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.

Partner's power to bind co-partners.

CCLI. 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.

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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 circumstances under which the bill was drawn.

(*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 receipt, 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.

Annulment of contract defining partner's rights and obligations.

CCLII. 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 nett 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 nett 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.

Rules determining partner's mutual relations, where no contract to contrary.

CCLIII. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules:—

(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:

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(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 opinion of 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.

When court may dissolve partnership.

CCLIV. 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 partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

(3) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

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(4) When any partner becomes incapable of performing his part of the partnership contract:

(5) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners:

(6) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

CCLV. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

CCLVI. 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.

General duties of partners.

CCLVII. 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.

Account to firm of benefit derived from transaction affecting partnership.

CCLVIII. A partner must account to the firm for any benefit derived from a transaction affecting the 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.

Obligations to firm, of partner carrying on competing business.

CCLIX. 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.

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Revocation of continuing guarantee by change in firm.

CCLX. 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.

Non-liability of deceased partner's estate for subsequent obligations.

CCLXI. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Payment of partnership-debts, and of separate debts.

CCLXII. 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 applied in payment of his separate debts or paid to him. 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.

Continuance of partners' rights and obligations after dissolution.

CCLXIII. 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.

Notice of dissolution.

CCLXIV. Persons dealing with a firm will not be affected by a dissolution, of which no public notice has been given, unless they themselves had notice of such dissolution.

Right of partners to apply for windingup by court after termination of partnership.

CCLXV. 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.

Limited liability partnerships, incorporated partnerships, and joint stock companies.

CCLXVI. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

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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.

Acts.

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.
Act XX of 1844.	An Act to amend the law relating to advances *bonâ fide* made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 & 6 Victoria, c. 39, as altered by this Act.	The whole.
Act XXI of 1848.	An Act for avoiding Wagers.	The whole.
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.	Sections 9 & 10.
Act XV of 1866.	An Act to amend the law of partnership in India.	The whole.
Act VIII of 1867.	An Act to amend the law relating to Horse-racing in India.	The whole.

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A. D. 1872. ACT XV.

THE INDIAN CHRISTIAN MARRIAGE ACT.

AN ACT *to consolidate and amend the Law relating to the solemnization in India of the Marriages of Christians.*

Preamble.

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

PRELIMINARY.

Short title.

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

Extent.

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of native princes and states in alliance with Her Majesty;

Commencement.

and it shall come into force on the passing thereof.

Enactments repealed.

II. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under any such enactment.

And all appointments made, licences granted, consents given, certificates issued and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued, and done under this Act.

For clause xxiv. of Section 19 of the Court Fees' Act, 1870, the following shall be substituted:—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, Sections 45 and 48."

Interpretation clause.

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

"Church of England." "Anglican."

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

"Church of Scotland."

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

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"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, and who is not a widower or a widow; "Minor."

"Native State" means the territories of any native prince or state in alliance with Her Majesty; "Native State."

The expression "Christains" means persons professing the Christian religion; "Christians."

And the expression "Native Christians" includes the Christian descendants of natives of India converted to Christianity, as well as such converts. "Native Charistians."

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

IV. Every marriage between persons, one or both of whom is a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Persons by whom marriage may be solemnized.

V. 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 licensed under this Act to solemnize marriages;

(4) by, or in the presence of a marriage registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

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Grant and revocation of licenses to solemnize marriages.

VI. The local Government may grant licences to ministers of religion to solemnize marriages within the territories under its administration, and may revoke such licences.

Marriage Registrars.

VII. The local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the marriage registrar or marriage registrars for any district subject to its administration.

Senior marriage Registrars.

Where there are more marriage registrars than one in any district, the local Government shall appoint one of them to be the senior marriage registrar.

Magistrate when to be marriage registrar.

When there is only one marriage registrar in a district, and such registrar is absent from such district, or ill, or when his office is temporarily vacant, the magistrate of the district shall act as, and be marriage registrar thereof during such absence, illness, or temporary vacancy.

Marriage registrars in native states.

VIII. The Governor-General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as holding any office for the time being, to be a marriage registrar in respect of any district or place within the territories of any native prince or state in alliance with Her Majesty.

The Governor-General in Council may, by like notification, revoke any such appointment.

Licensing of persons to grant certificates of marriage between native christians.

IX. The local Government or (so far as regards any native state) the Governor-General in Council may grant a licence to any 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 licence may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

Time for solemnizing marriage.

X. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

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Provided that nothing in this section shall apply to— Exceptions.

(1) a clergyman of the Church of England solemnizing a marriage under a special licence 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, or

(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 licence 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 licence.

XI. No clergyman of the Church of England shall solemnize a marriage in any place other than a church, Place for solemnizing marriage.

unless there is no church within five miles distance by the shortest road from such place,

or unless he has received a special licence authorizing him to do so under the hand and seal of the Anglican bishop of the diocese or his commissary.

For such special licence, the registrar of the diocese may charge such additional fee as the said bishop from time to time authorizes. Fee for special licence.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

XII. Whenever a marriage is intended to be solemnized by a minister of religion licensed to solemnize marriages under this Act— Notice of intended marriage.

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

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

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(*b*) the dwelling-place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

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

Publication of such notice.

XIII. If the persons intending marriage desire it to be solemnized in a particular church, and if the minister of religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Notice of intended marriage in private dwelling.

XIV. 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 12, shall forward it to the marriage registrar of the district, who shall affix the same to some conspicuous place in his own office.

Sending copy of notice to marriage registrar when one party is a minor.

XV. When one of the persons intending marriage is a minor, every minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of Section 13, 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.

Procedure on receipt of notice.

XVI. The marriage registrar, or senior marriage registrar, as the case may be, on receiving any such notice, shall affix it 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.

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Certificate of notice given and declaration made issued.

XVII. 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 the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made.

Proviso.

Provided—

(1) that 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) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorized in that behalf.

Declaration before issue of certificate.

XVIII. The certificate mentioned in Section 17 shall not be issued until one of the persons intending marriage has appeared personally before the minister and made a solemn declaration—

(*a*) 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 is or are a minor or minors,

(*b*) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father or guardian or mother when necessary.

XIX. The father, if living, of any minor, 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.

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Power to prohibit by notice issue of certificate.

XX. Every person whose consent to a marriage is required under Section 19, is hereby authorized to prohibit the issue 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.

Procedure on receipt of notice.

XXI. If any such notice be received by such minister, 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.

Issue of certificate in case of minority.

XXII. 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 19, has been obtained, such minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to native christians.

XXIII. 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 17, such minister shall, before issuing the 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 the notice or certificate to such Native Christian into some language which he understands.

Form of certificate.

XXIV. The certificate to be issued by such minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

XXV. After the issue of the certificate by the minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the minister thinks fit to adopt:

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Provided that the marriage be solemnized in the presence of at least two witnesses besides the minister.

Certificate void if marriage not solemnized within two months.

XXVI. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such minister as aforesaid, such certificate and all proceedings (if any) 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 manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

Marriages when to be registered.

XXVII. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

Registration of marriages solemnized by clergymen of church of England.

XXVIII. Every clergyman of the Church of England shall keep a register of marriages and shall register therein according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Quarterly returns to archdeaconry.

XXIX. 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 any place where he has any spiritual charge to the registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns

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 sent by such clergy-

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men within two weeks from the expiration of each of the quarters above specified.

The said registrar upon receiving the said returns, shall send one copy thereof to the secretary to the local Government.

Registration and returns of marriages solemnized by clergymen of Church of Rome.

XXX. 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.

Registration and returns of marriages solemnized by clergymen of Church of Scotland.

XXXI. Every clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed every marriage which he solemnizes under this Act, and 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 29, of all such marriages.

Certain marriages to be registered in duplicate.

XXXII. Every marriage solemnized by any person who has received episcopal ordination, but who is not a clergyman of the Church of England, or of the Church of Rome, or by any minister of religion licensed under this Act, to solemnize marriages, shall immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same (that is to say) 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.

Entries of such marriages to be signed and attested.

XXXIII. The entry of such marriage in both the certificate and marriage-register book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

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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.

Certificate to be forwarded to marriage registrar, copied, and sent to Government.

XXXIV. The person solemnizing the marriage shall forthwith separate the certificate from the marriage register book, and send it, within one month from the time of the solemnization, to 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.

Copies of certificates to be entered and numbered.

XXXV. 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 he receives each certificate.

Registrar to add number of entry to certificate, and send to Government.

XXXVI. 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, send the same to the secretary to the local Government.

Registration of marriages between Native Christians under Part I. or III.

XXXVII. When any marriage between Native Christians is solemnized under Part I. or Part III. of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by Sections 28 to 36 both inclusive, register the marriage in a separate register book, and shall keep it safely until it is filled, or, if he 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.

Custody and disposal of register book.

Whoever has the control of the book at the time when it is filled, shall send it to the marriage registrar of the dis-

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trict, 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.

PART V.

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

Notice of intended marriage before marriage registrar.

XXXVIII. 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 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, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

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

Publication of notice.

XXXIX. Every marriage registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every marriage registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other marriage registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed and copy entered in marriage notice book.

XL. The marriage registrar shall file all such notices and keep them with the records of his office,

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and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the local Government, and 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.

Certificate of notice given and oath made.

XLI. If the party by whom the notice was given requests the marriage registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the marriage registrar shall issue under his hand a certificate of such notice having been given, and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath or declaration to be made before issue of certificate.

XLII. The certificate mentioned in Section 41 shall not be issued by any marriage registrar, until on of the parties intending marriage appears personally before such marriage registrar, and makes oath

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have or (where they have dwelt in the districts of different marriage registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such marriage registrar,

and, where either or each of the parties is a minor,

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(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Petition to high court to order certificate in less than fourteen days.

XLIII. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a judge of the high court, 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.

Order on petition.

And on sufficient cause being shown, the said judge may, in his discretion, make an order upon such marriage registrar, directing him to issue his certificate at any time to be mentioned in the said order, before the expiration of the fourteen days so required;

And the said marriage registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

Provision as to consent of father or guardian to apply.

XLIV. The provisions of section nineteen apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.

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 position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest.

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 person who entered it.

Petition where person whose consent necessary is insane.

XLV. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

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or if any such person (other than the father) without just cause withholds his consent to the marriage,

or unjustly withholds consent.

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 a judge of the high court, or if he is not resident within any of the said towns, then to the district judge.

Procedure on petition.

And the said judge of the high court, or district judge, as the case may be, may examine the allegation of the petition in a summary way.

And if upon examination such marriage appears proper, such judge of the high court or district judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and if he 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.

Petition when marriage registrar refuses certificate.

XLVI. Whenever a marriage registrar refuses 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 a judge of the high court, or if such district is not within any of the said towns, then to the district judge.

Procedure on petition

The said judge of the high court or district judge, as the case may be, may examine the allegation of the petition in a summary way, and shall decide thereon.

The decision of such judge of the high court or district judge, as the case may be, 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.

Petition when marriage registrar in native state refuses certificate.

XLVII. Whenever a marriage registrar resident in any native state refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor-General in council, who shall decide thereon.

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Such decision shall be final, and the marriage registrar to whom the application was originally made shall proceed in accordance therewith.

Petition when registrar doubts authority of person forbidding.

XLVIII. 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 his district is within any of the towns of Calcutta, Madras and Bombay, to a judge of the high court, or, if such district be not within any of the said towns, then to the district judge.

Procedure on petition.

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 judge of the high court or district judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such judge of the high court or district judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid.

And thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Reference when marriage registrar in native state doubts authority of person forbidding.

Whenever a marriage registrar appointed under section eight to act within any native state is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said marriage registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council

Procedure on reference.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

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and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

XLIX. 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 a judge of the high court 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.

Form of certificate.

L. 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.

Solemnization of marriage after issue of certificate.

LI. 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 registrar for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some marriage registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the marriage registrar.

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.*"

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And each of the parties shall say to the other as follows or to the like effect—

"I call upon those persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]."

When marriage is not had within two months after notice, a new notice required.

LII. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the marriage registrar, as required by section forty, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be 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.

Marriage registrar may ask for particulars to be registered.

LIII. A marriage registrar before whom any marriage is solemnized under this part, may ask of the persons to be married the several particulars required to be registered touching such marriage.

Registration of marriages solemnized under Part V.

LIV. After the solemnization of any marriage under this part, the marriage registrar present at such solemnization shall forthwith register the 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.

The entry of such marriage in both the certificate and the marriage register books 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 it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the marriage registrar and person solemnizing the marriage.

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.

Certificates to be sent monthly to Secretary to Government.

LV. The marriage registrar shall forthwith separate the certificate from the marriage register book and send it, at

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the end of every month, to the Secretary to the Local Government.

Custody of register book.

The marriage registrar shall keep safely the said register book until it is filled, and shall then send it to the Secretary to the Local Government, to be kept by him with the records of his office.

Officer to whom registrars in native states shall send certificates.

LVI. The marriage registrars in native states shall send the certificates mentioned in section fifty-four to such officers as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Registrars to ascertain that notice and certificate are understood by native christians.

LVII. When any native christian about to be married gives 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 marriage registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such native christian into a language which he understands;

or the marriage registrar shall otherwise ascertain whether the native christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations at marriage.

LVIII. When any native christian is married under the provisions of this part the person solemnizing the marriage shall ascertain whether such native christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such native christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between native christians.

LIX. The Registration of marriages between native christians under this part shall be made in conformity with the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

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PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

On what conditions marriages of native christians may be certified.

LX. Every marriage between native christians applying for a certificate, shall, without the perliminary 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) Neither of the persons intending to be married shall have a wife or husband still living:

(3) In the presence of a person licensed under section nine, and of at least two credible witnesses other than such person, 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:

Provided that no marriage shall be certifiedu nder 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.

Grant of certificate.

LXI. When, in respect to any marriage solemnised under this part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has 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 the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Register book to be kept.

LXII. A register book of all marriages of which certificates are granted under section sixty-one, shall be kept by

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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 in this behalf, and true extracts thereform, duly authenticated, shall be deposited at such places as the local Government directs.

Searches in register book and copies of entries.

LXIII. 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 proper fee, give a copy, certified under his hand, of any entry therein.

Books in which marriages of Native Christians under Part I. or Part III. are registered.

LXIV. The provisions of sections sixty-two and sixty-three as to the form of the register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section thirty-seven.

Part VI. not to apply to Roman Catholics.

LXV. This part of this Act, except so much of sections sixty-two and sixty-three as are referred to in section sixty-four, shall not apply to marriages between Roman Catholics.

Saving of certain marriages.

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V. of Act No. XXV of 1864, previous to the twenty-third day of February 1865.

PART VII.

PENALTIES.

False oath, notice or certificate for procuring marriage;

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

Forbidding, by false personation, issue of certificate by marriage registrar;

LXVII. Whoever forbids the issue by a marriage registrar of a certificate by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not

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having reason to believe it to be true, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

Solemnizing marriage without due authority.

LXVIII. 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 is or are a Christain or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years and not exceeding ten years,

or, if the offender be an European or American, with 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*),

and shall also be liable to fine.

Solemnizing marriage out of proper time, or without witnesses;

LXIX. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special licence;

This section does 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.

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

LXX. 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 is a minor, and the required consent of the parents or guardians to such marriage

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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.

Issuing certificate, or marrying, without publication of notice;

LXXI. A marriage registrar under this act, who commits any of the following offences :—

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

Marrying after expiry of certificate;

(2) after the expiration of two months from the issue by him of a certificate in respect of any marriage solemnizes such marriage ;

Solemnizing marriage with minor within fourteen days, without authority of court, or without sending copy of notice;

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice 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;

Issuing certificate against authorized prohibition;

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

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

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition;

LXXII. 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, without the order of a competent court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, 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 in this behalf,

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shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Persons authorized to solemnize marriages (other than clergymen of the Churches of England, Scotland, or Rome.)

LXXIII. Whoever, being authorized under 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 rites, rules, ceremonies, and customs of that church,

Issuing certificate, or marrying without publishing notice;

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 has been issued by him;

or after expiry of certificate;

Issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage 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;

Issuing certificate authorizedly forbidden;

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;

solemnizing marriage authorizedly forbidden;

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

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

Unlicensed person granting certificate

LXXIV. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grants such

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certificate intending thereby to make 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. pretending to be licensed;

LXXV. Whoever, by himself or another, wilfully destroys or injures any register book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom, Destroying or falsifying register books.

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

or wilfully inserts 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.

LXXVI. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed. Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

LXXVII. 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:— What matters need not be proved in respect of marriage in accordance with Act.

(1) Any statement made in regard to the dwelling of the persons married, or to 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 and place at which the marriage has been solemnized:

(5) The registration of the marriage.

LXXVIII. Every person charged with duty of registering any marriage, who discovers any error in the form or substance of any such 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, correct the error by entry in the margin, without any alteration of the original Corrections of errors.

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entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

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

Searches and copies of entries.

LXXIX. 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 duplicate or copies of certificate under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage register, &c., to be evidence.

LXXX. 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 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, 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, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to Secretary of State for India.

LXXXI. The secretary to the local Government and the officers appointed under section fifty-six shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to them respectively during such quarter the certificates of the marriages of which the Governor-General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates signed by them respectively to the secretary to the Government of India in

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the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths, and Marriages:

Provided that in the case of the governments of Madras and Bombay, the said certificates shall be forwarded by such governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

LXXXII. Fees shall be chargeable under this act for—

receiving and publishing notices of marriages;

issuing certificates of marriage by marriage registrars and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said registrars;

searching register books or certificates, or duplicates, or copies thereof;

giving copies of entries in the same under sections sixty-three and seventy-nine.

The local Government shall fix the amount of such fees respectively,

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

Power to make rules.

LXXXIII. The local Government may make rules in regard to the disposal of the fees mentioned in section eighty-two, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act.

Power to prescribe fees and rules for native states.

LXXXIV. The powers conferred on the local Government by sections eight-two and eight-three may, so far as regards native states, be exercised by the Governor General in Council.

Power to declare who shall be district judge.

LXXXV. The local Government may, by notification in the official gazette, declare who shall, in any place to which this Act applies, be deemed to be the district judge.

Power to delegate functions under this Act of Governor General in Council.

LXXXVI. The powers and functions given by this Act to the Governor-General in Council may be delegated to and exercised by such officers as the Governor-General in Council from time to time appoints in this behalf.

And all such powers and functions may be exercised, as regards native states situate within the local limits of the

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presidencies of Fort St. George and Bombay, by the Governors in Council of those presidencies respectively.

Saving of consular marriages.

LXXXVII. Nothing in this Act applies to any marriage performed by any minister, consul, or consular agent between subjects of the state which he represents and according to the laws of such state.

Non-validation of marriages within prohibited degrees.

LXXXVIII. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

SCHEDULE I.

(See Sections 12 and 38.)

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.
James Smith.	*Widower.*	*Carpenter.*	*Of full Age*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

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.]

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SCHEDULE II.

(See Sections 24 and 50.)

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.
James Smith.	*Widower.*	*Carpenter.*	*Of full Age.*	16, *Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	20, *Hastings' Street*	*More than a month.*		

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.]

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SCHEDULE III.

(*See Section* 28.)

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns of Marriage for

The Archdeaconry of ... { *Calcutta.* / *Madras.* / *Bombay.* }

I, ———, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriages within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.* }

MARRIAGES solemnized at { *Allahabad.* / *Barrackpur.* / *Bareli.* / *Calcutta, &c., &c.* }

When married.			Names of parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signature of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnising the marriage.
Year.	Month.	Day.	Christian.	Surname.									

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SCHEDULE IV.

(See Sections 32 and 54.)

MARRIAGE REGISTER BOOK.

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

Married in the

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

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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.
	Day.	Month.	Year.	Christian name.	Surname.					
1				*James* ...	*White* ...	26 *years*...	*Widower* ...	*Carpenter*...	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	17 *years*...	*Spinster* ...	...	*Agra* ...	*John Duncan.*

Married in the

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

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SCHEDULE V.

(*See Section* 2.)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal
Statue 58 Geo. 3, cap. 84.	An Act to remove doubts as to the validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vic., cap. 40.	An Act for Marriages in India	The whole.
Act No. V. of 1852	An Act for giving effect to the provisions of an Act of Parliament passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriage in India."	So much as has not been repealed.
Act No. V. of 1865	The Indian Marriage Act, 1865.	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII. of 1866	An Act to extend the Indian Marriage Act 1865, to the Hyderabad Assigned Districts and the Cantonments of Secunderabad, Trimulgerry and Aurungabad.	The whole.

A. D. 1872. ACT XVIII.

An Act to amend the Indian Evidence Act, 1872.

Passed on the 29th August 1872.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872; it is hereby enacted as follows :— Preamble.

I. This Act may be called "The Indian Evidence Act Amendment Act;" Short title.

and it shall come into force on the passing thereof. Commencement.

II. In Section 32 of the Indian Evidence Act, 1872, clauses (5) and (6), after the word "relationship," the words "by blood, marriage, or adoption," shall be inserted. Amendment of Act 1 of 1872, section 32, clauses 5 and 6.

III. In Section 41 of the same Act, lines seventeen, twenty, and twenty-three, after the word "judgment," the words "order or decree" shall be inserted. Amendment of Section 41.

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Amendment of Section 45.

IV. In Section 45 of the same Act, line five, after the word "art," the words "or in questions as to identity of handwriting," shall be inserted.

Amendment of Section 57.

V. In Section 57 of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted.

Amendment of Section 66.

VI. In Section 66 of the same Act, line five, after the word "is," the words "or to his attorney or pleader" shall be inserted.

Amendment of Section 91.

VII. In Section 91 of the same Act, exception (2), for the words "under the Indian Succession Act," the words "admitted to probate in British India," shall be substituted.

Amendment of Section 92.

VIII. In Section 92 of the Indian Evidence Act, 1872, proviso (1), for the words "want of failure," the words "want or failure" shall be substituted.

Amendment of Section 108.

IX. In Section 108 of the same Act, line one, for the word "when" (1) the words "Provided that when" shall be substituted; and in the last line, for the word 'on,' the words 'shifted to' shall be substituted.

Amendment of Sections 126 and 128.

X. In Section 126 of the same Act, line twenty-two, and in Section 128 of the same Act, line six, after the word "barrister," the word "pleader," shall be inserted.

In Section 126 of the same Act, line fifteen, for the word "criminal," the word "illegal" shall be substituted.

Amendment of Section 155.

XI. In Section 155 of the same Act, paragraph (2), for the word 'had,' the word 'accepted' shall be substituted.

Saving of Act XV. of 1852, Section 12.

XII. Nothing in the Indian Evidence Act, 1872, shall be deemed to affect Act No. XV. of 1852 (*to amend the Law of Evidence*), Section 12.

NOTE.—The edition of Act No. I. of 1872 above referred to, is that in royal octavo.

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ACTS OF THE MADRAS GOVERNMENT.

A. D. 1863. ACT IV.

AN ACT *for investing certain Courts in the Presidency of Fort Saint George, either wholly or in part, with the jurisdiction exercised by Courts of Small Causes established under Act XLII. of* 1860.

Passed on the 29th April 1863.

Preamble.

WHEREAS it is expedient that in the Presidency of Fort St. George, the disposal of small claims in the Courts of district moonsiffs should be facilitated, and that certain other judges should be invested with small cause jurisdiction: it is enacted as follows:—

"Special jurisdiction" explained.

I. The term "special jurisdiction," as used in this Act, shall denote jurisdiction exercised in conformity with Act XLII. of 1860, and the Acts amending the same.

Reg. VI. of 1816, Sec. 43, repealed.

II. Section 43 of the Madras Regulation VI. of 1816 is hereby repealed.

District moonsiffs to have special jurisdiction up to fifty rupees.

III. In all suits of a nature cognizable in Court of Small Causes when the debt, damage, or demand does not exceed in amount or value the sum of fifty rupees, district moonsiffs in the presidency of Fort Saint George shall have the same powers, and shall be governed by the same rules of procedure, as if they were appointed under Act XLII. of 1860.

Other judges may be invested with special jurisdiction.

IV. The Governor in Council of Fort Saint George may invest any civil or subordinate judge, or principal sudder ameen, with special jurisdiction within such local limits as the Government shall, from time to time, appoint.

Which may be declared to be exclusive within specified limits.

V. Whenever in the presidency of Fort Saint George a judge shall have been appointed under Act XLII. of 1860, or shall have been invested with special jurisdiction under

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the preceding section of this Act, it shall be lawful for the Governor in Council to prescribe certain local limits within which such judge shall have exclusive special jurisdiction.

Cases in which suits must be preferred before district moonsiff.

VI. No suit in which a district moonsiff is competent to exercise special jurisdiction under Section III, shall be preferred in any higher court, unless in cases where the defendant is subject to the exclusive special jurisdiction of a Small Cause Court constitued under Act XLII. of 1860, or of a court invested with the powers of a Court of Small Causes under Sections IV and V of this Act.

Act to form part of Act XLII. of 1860.

VII. This Act shall be taken and read as part of Act XLII. of 1860.

Date of operation.

VIII. This Act shall come into operation on the 1st day of July 1863.

A. D. 1865. ACT I.

AN ACT *to provide for the Alteration of the Stations of Zillah Courts and limits of Districts or Zillahs in the Madras Presidency.*

Passed on the 5th January 1865.

Preamble.

WHEREAS it is expedient to provide for the alteration of the stations of Zillah Courts and of the limits of Districts or Zillahs in the Madras Presidency; it is enacted as follows:—

The Governor in Council of Fort St. George may alter the limits of existing districts or zillahs.

I. It shall be lawful for the Governor in Council of Fort Saint George, from to time, to change the stations of zillah courts, and to alter the limits of existing districts or zillahs in any part of the provinces subject to his control.

Section 8 of Act XXIV. of 1839, and section 53 of Act VII. of 1843, partially repealed.

II. So much of Act XXIV of 1839, Section 8, and of Act VII of 1843, Section 53, as makes the assent of the Governor General necessary to any alteration of the station of zillah courts or of the limits of the tracts or zillahs under the Government of Fort Saint George, is hereby repealed.

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A. D. 1867. ACT I.

An Act to shorten the language used in Acts of the Governor of Fort Saint George in Council, and to make certain provisions relating thereto.

Preamble.

Whereas it is expedient to enact once for all certain definitions of terms usually employed in the Acts of the Governor of Fort Saint George in Council, and to make certain other provisions regarding such Acts: it is enacted as follows:—

Words defined in Penal and Criminal Procedure Codes to be taken in the same sense.

I. Whenever in any future Act of the Governor of Fort Saint George in Council, any word or expression shall be employed which has been defined in Chapter II of the Indian Penal Code, or in Chapter I of the Code of Criminal Procedure, such word or expression shall be taken to have the meaning assigned to it in those chapters, unless it be otherwise provided by the Act, or unless there be something either in the subject or context repugnant to such construction.

"Magistrate of police."

II. *First.*—The words "magistrate of police" shall denote any person exercising the powers of a magistrate of police within the local limits of the ordinary original civil jurisdiction of the high court of judicature at Madras for the time being.

"Town of Madras."

Second.—The words "town of Madras" shall denote such places as are within the local limits for the time being of the ordinary original civil jurisdiction of the high court of judicature at Madras.

Repeal of any Act not to revive laws repealed by such Act.

III. Where any Act repealing in whole or in part any former enactment is itself repealed, such last repeal shall not revive the enactment, or any of the provisions thereof before repealed, unless words be added reviving such enactments or provisions.

Matters done under Act before its repeal to be unaffected.

IV. The repeal of any Act or Regulation shall not affect any act which shall have been done, or any offence which shall have been committed, or any fine or penalty which have been incurred, or any proceedings which shall have

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been commenced, before the repealing Act shall have come into operation.

Act to come into operation from date notified in gazette.

V. Where in any future Act of the Governor of Fort Saint George in Council no time is mentioned at which the same shall come into operation, such Act shall take effect from such date as the Governor in Council may notify by publication in the *Fort Saint George Gazette*.

Judicial notice to be taken of Madras Acts.

VI. Within the territories subject to the Government of Fort Saint George, all courts of justice, whether exercising civil or criminal jurisdiction or any other jurisdiction whatsoever, and all persons having by law or consent of parties authority to take evidence, shall take judicial notice of all Acts heretofore made or hereafter to be made by the Governor of Fort Saint George in Council, whether the same be of a public or of a private nature, and shall also take judicial notice of any publication by the Governor of Fort Saint George in Council under the preceding section.

Recital of public fact in Madras Act to be *prima facie* evidence of truth of fact.

VII. Any recital contained in any Act of the Governor of Fort Saint George in Council heretofore made or hereafter to be made of any fact of a public nature, shall be deemed before all such courts and persons, as in the immediately preceding section mentioned, to be *prima facie* evidence of the truth of the fact recited.

Short title.

VIII. This Act may be cited for all purposes as "The Madras General Clauses Act, 1867."

A. D. 1867. ACT III.

AN ACT *to provide for the examination and settlement of claims against His Highness Prince Azeem Jah Bahadoor.*

Passed on the 1st June 1867.

Preamble.

WHEREAS Her Majesty's Government has allotted the sum of fifteen lacs of Rupees towards the payment of such of the creditors of His Highness Prince Azeem Jah Bahadoor as are willing to submit to the terms upon which such payment

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is offered, and has appointed a commissioner to investigate the said claims; it is enacted as follows:—

Notification of the terms on which claims are to be considered.

I. The Government of Fort Saint George shall, by Notification in the *Fort Saint George Gazette*, fix the time and place at which claims preferred under this Act are to be presented. No creditor shall be entitled to have his claim taken into consideration unless it shall be presented in person or by a duly authorized agent at the place and within the time specified in such Notification. It shall be lawful for the Government of Fort Saint George from time to time, by a further notification in the *Fort Saint George Gazette*, to vary or cancel any previous notification.

Claim to contain full particulars.

II. Every creditor shall, along with his claim, present full particulars thereof, and the commissioner shall be authorized from time to time to call for further and better particulars, and, at his discretion, to refuse to proceed with the investigation of the claim until such additional particulars are supplied. Such claim and the particulars thereof shall be written in the English language.

All documents to be given up when claim is presented.

III. Every written document upon which the creditor bases his claim, or upon which he relies in support thereof, shall be delivered to the commissioner along with the claim, and the creditor shall at the same time furnish a translation thereof, if the original is not in English, to be filed along with the claim. If the document be an entry in any book, the claimant shall produce the book to the commissioner, together with a copy of the entry on which he relies, and an English translation thereof, if the original be not in English. The commissioner shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant. Any document which was in the possession or under the control of the claimant, and which was not delivered or produced by him to the commissioner along with the claim, shall not be received in evidence in his behalf at the investigation of the case without the sanction of the commissioner.

Claimants shall submit all their claims to the commissioners.

IV. Every creditor who shall prefer a claim under this Act shall be bound to submit to the commissioner all his

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claims against His Highness Prince Azeem Jah Bahadoor or his property, or against the person or property of any person who shall have made himself responsible, either as principal or surety, for any debt incurred by or on account of, or for the use of, His said Highness. Each claimant shall along with his claim file a written declaration, signed by himself or by his duly authorized agent, in the form provided in Schedule A of this Act, and shall also lodge with the commissioner all documents in the way of mortgage or otherwise which he holds as security for his claim, whether such documents have been executed by His said Highness or by any other person on his behalf or for his benefit.

Written declaration to be filed with claim.

Creditor who has claimed under this Act to be barred of remedy at law.

V. No creditor who shall have made a claim under this Act shall be entitled to sue for, or recover in any court of justice, any debt in respect of which he did claim or might have claimed under this Act, or to enforce any security which he ought to have surrendered to the commissioner.

Unless for debts as to which he was ignorant that he might have claimed.

Provided always, that it shall be lawful for such creditor in any court to establish that at the time of filing his claim he was not aware that such debt was in fact incurred, or that such security was granted, on behalf of His Highness Prince Azeem Jah Bahadoor, or for his use or benefit.

Effect of transfer of debt upon the rights of the assignee.

VI. Where any creditor who shall have made a claim under this Act shall, after the date of its coming into operation, transfer any debt upon which he might have claimed, or any security which he ought to have surrendered to the commissioner, if no transfer had taken place, then his assignee shall not be entitled to recover such debt or to enforce such security otherwise than by claim before the commissioner, unless he shall establish that at the time of the transfer he was not aware that the debt was in fact incurred, or that the security was granted, on behalf of His Highness Prince Azeem Jah Bahadoor, or for his use or benefit.

Mode of investigation.

VII. Every investigation by the commissioner under this Act shall be conducted publicly, and it shall be lawful for the claimant to appear upon such investigation in person or by his agent, and to adduce evidence and to be heard in support of his claim. It shall also be lawful for His High-

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ness Prince Azeem Jah Bahadoor either in person or by agent, and for the Government of Fort Saint George by their law officers or other authorized agent, to appear and be heard, and cross examine the witnesses of the claimant, and adduce evidence in opposition to such claim.

Power to enforce attendance of witnesses and production of documents.

VIII. It shall be lawful for the commissioner to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a civil court under Sections 149 to 158, 166 and 169 to 171 of the Code of Civil Procedure. The commissioner shall also have the same power of taking the evidence of absent witnesses as is possessed by the High Court of Madras under Sections 175 to 179 of the said Code of Civil Procedure.

Fees for serving process.

IX. The commissioner shall, with the sanction of the Government of Fort Saint George, fix a scale of fees sufficient to pay the cost of serving any notice or summons or of executing any commission issued under this Act, and no notice, summons or commission shall be issued until the fees have been paid by the party who requires the same: provided always, that it shall be lawful for any person to serve any such notice or summons by his own agents at his own expense, in which case no fee shall be exacted.

Power to administer oath.

X. It shall be lawful for the commissioner to administer an oath in such form as he shall think fit to any person who shall be examined before him touching the matters to be inquired into. But it shall not be necessary for the commissioner to take evidence upon oath, unless he shall think it expedient so to do.

Proceeding of commissioner to be a judicial proceeding.

Statements made before him to be evidence.

XI. Every investigation conducted by the commissioner with reference to any claim preferred before him, or any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code; and every statement made by any person who is examined by or before such commissioner with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the said code.

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SCHEDULE A.

I, do hereby declare that the claim which I have this day presented to the commissioner for investigating the debts of His Highness Prince Azeem Jah Bahadoor, contains a full and true statement of all claims which I hold against His said Highness, or against any other person in respect of liabilities incurred by such person on account of, or for the benefit of, the Prince, and that I have not transferred any such claim to any other person. (*If any such transfer has at any time taken place, substitute for the last clause*—" and I do further declare that I formerly held a claim against which I transferred to on ")

And I further declare that the particulars of my claim contain a full and true statement, to the best of my knowledge and belief, of the mode in which such claim was originally incurred, and of the consideration originally received by, or for the use of His said Highness, and of the proportions in which such claim is made up of principal and interest.

I also agree to submit absolutely to the award of the Government of Fort Saint George, upon the report of the said commissioner, either rejecting my claim, or allowing it wholly or in part; and I consent to receive such award, or any payment under the same, in full satisfaction and discharge of all claims which I might have preferred under this Act, and of all obligations which I hold from any person, and of all securities which I could enforce against any property for debts incurred by or on behalf of, or for the benefit of the said Prince Azeem Jah Bahadoor.

I further declare that I have filed with my claim, and do hereby surrender to the Government of Fort Saint George, all my right, title and interest in all documents now in my possession or under my control, which constitute evidence, or secure any debt or liability incurred by or on behalf of the said Prince Azeem Jah Bahadoor.

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A. D. 1868. ACT I.

AN ACT *for the appointment of a Commissioner for the administration of civil and criminal justice and for the superintendence and collection of the revenues on the Neilgherry Hills.*

Passed on the 6th June 1868.

Preamble.

WHEREAS it is expedient that the Neilgherry Hills shall be separated from the District of Coimbatore, and that the administration of civil and criminal justice and the superintendence and collection of the revenues on those hills shall be placed under a single officer; it is hereby enacted as follows:—

Judicial and revenue administration of Neilgherry hills vested in a commissioner.

I. From and after the day upon which this Act shall come into operation, the Civil and Session Court at Ootacamund shall be abolished, and the administration of civil and criminal justice, and the superintendence and collection of the revenues in the tracts at present subject to the jurisdiction of the said civil and session court, shall be vested in an officer who shall be styled Commissioner of the Neilgherry Hills, and who shall exercise the powers of a civil and session judge, of a principal sudder ameen in civil suits, and of a collector of revenue, in the said tracts and in any other adjacent tracts which the Governor of Fort Saint George in Council shall, from time to time, declare by an order in council to be included in the jurisdiction of the said commissioner.

Appointment of an assistant commissioner.

II. The Governor of Fort Saint George in Council shall appoint an officer to be assistant to the said commissioner, and who shall be styled assistant commissioner of the Neilgherry Hills.

Civil powers of assistant commissioner.

III. The said assistant commissioner shall be competent to try all civil suits which, as regards the amount sued for, would be within the jurisdiction of a district moonsiff in the Presidency of Fort Saint George.

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Appeals from assistant commissioner's decrees to lie to commissioner.

IV. An appeal shall lie to the commissioner from the decrees passed by the assistant commissioner in all suits tried by him.

Neilgherry hills constituted a district, and assistant commissioner to be magistrate thereof.

V. The tracts subject to the jurisdiction of the commissioner of the Neilgherry Hills shall be deemed to be a district within the meaning of the Code of Criminal Procedure, and the said assistant commissioner shall be the magistrate of that district.

Revenue duties of assistant commissioner.

VI. The said assistant commissioner shall perform such duties in his capacity of an assistant collector of revenue as may be assigned to him by the commissioner.

Appeals from assistant commissioner's orders as to revenue or magisterial matters, to lie to commissioner.

VII. An appeal shall lie to the commissioner from all orders passed by the assistant commissioner in his capacity of an assistant collector of revenue: and in respect of all acts done by the said assistant commissioner in his capacity of magistrate, the commissioner shall be competent to exercise the same appellate jurisdiction as is now or may hereafter be vested in session judges by the Code of Criminal Procedure or any other law.

Suits by persons aggrieved by administrative acts of commissioner or his assistant, to be instituted in civil court, Coimbatore.

VIII. Any person who may consider himself aggrieved by an act done or order passed by the said commissioner or his assistant in their administrative capacity, shall be at liberty to institute a suit against either or both of those officers in the civil court of Coimbatore.

Appeals from decisions passed by commissioner or his assistant, as a collector or assistant collector, which, if passed by the collector of any other district in this presidency, would be appealable to the zillah judge, to lie to zillah judge of Coimbatore.

IX. All appeals which, under any law now existing or which may hereafter be passed, would lie from the decision of a collector to a zillah judge, shall, when such decisions have been passed by the said commissioner or his assistant in their respective capacities of collector and assistant collector, be cognizable by the zillah judge of Coimbatore.

Appeals from sentences, orders, &c., passed by commissioner as a civil and session judge, to lie to Madras high court, as in the case of sentences, orders, &c., pass-

X. All appeals which, under any law now existing or which may hereafter be passed, would lie from the sentence, order, or decision of a civil and session court to the high court of judicature at Madras, shall, when such sentence, order, or decision has been passed by the said commissioner

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in his capacity of civil and session judge, be cognizable by the said high court of judicature; and all sentences which, if passed by a court of session, would require the confirmation of the said high court, shall, when such sentence has been passed by the said commissioner in his capacity of session judge, be subject to the confirmation of the said high court; and it shall be competent to the said high court to exercise the same degree of authority and supervision over the proceedings of the said commissioner and his assistant in their respective capacities of civil and session judge, principal sudder ameen, district moonsiff and magistrate of the district, as the said high court of judicature is now or may hereafter be empowered to exercise over any civil and session judge, principal sudder ameen, district moonsiff and magistrate, under any law now existing or which may hereafter be passed.

ed by civil and session judges.

Sentences passed by commissioner which if passed by a session court, would require confirmation of high court, to be subject to such confirmation.

Controlling authority of high court over the commissioner and assistant commissioner to be the same as that exercised by the court over certain grades of judicial and magisterial officers.

XI. All appeals which, under any law now existing or which may hereafter be passed, would lie from a decision or order of a collector of revenue to the Board of Revenue at Madras, shall, when such decision or order has been passed by the said commissioner in his capacity of collector, be cognizable by the said Board of Revenue; and it shall be competent to the said Board of Revenue to exercise the same degree of authority and supervision over the proceedings of the said commissioner and his assistant in their respective capacities of collector and assistant collector as the said Board of Revenue is now or may hereafter be empowered to exercise over any collector of revenue under any law now existing or which may hereafter be passed.

Appeals from orders passed by commissioner as a collector of revenue to lie to revenue board, as in the case of orders passed by collectors of revenue.

Controlling authority of Revenue Board over the commissioner or his assistant to be the same as that exercised by the board over any collector of revenue.

XII. In the administration of civil and criminal justice, and in the superintendence and collection of the revenues, the said commissioner and his assistant shall duly observe all Regulations and Acts in force in the presidency of Fort Saint George, in so far as they may not be inconsistent with the provisions of this Act; and all Regulations and Acts in force in the said presidency by which the powers and duties of civil and session judges, of magistrates, of principal sudder ameens, of district moonsiffs, of collectors or assistant collectors of revenue, are regulated or defined, shall be

Laws in force in Madras presidency as to judicial and revenue administration, to apply to Neilgherry hills; and those relating to the powers and duties of certain grades of judicial, magisterial and revenue officers, to apply to the commissioner and his assistant.

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applicable to the said commissioner and his assistant when exercising any of the powers or performing any of the duties of the offices abovementioned.

Transfer of civil suits, criminal charges, appeals, revenue suits, and proceedings.

XIII. If, at the time of this Act coming into operation, any civil suit shall be pending before the civil judge of Ootacamund, or if any criminal charge shall be remaining untried by the session court of Ootacamund, or if any appeal shall be then pending before the said civil and session court, or if any case shall have been remanded to the civil court of Ootacamund under Section 351 of the Code of Civil Procedure, or if any revenue suit, or proceeding, or criminal charge, shall be then pending before the special assistant collector and magistrate or before the collector and magistrate of Coimbatore, in any case in which the revenue suit or proceeding has reference to property situated within the tracts which, under Section 1 of this Act, shall have been declared to be under the jurisdiction of the said commissioner, or in which the offence charged is alleged to have been committed within the said tracts—the same shall forthwith be transferred to the said commissioner or assistant commissioner, to be dealt with by either of the said officers according as each case may fall within their respective jurisdictions.

Saving of local Government's power to invest persons residing on Neilgherry hills with magisterial powers.

XIV. Nothing in this Act contained shall interfere with the power of the local Government to invest any person resident on the Neilgherry Hills, other than the said commissioner and assistant commissioner, with any or all of the powers of a magistrate.

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APPENDIX A.

ACCOUNTS.

1. Every Court shall keep two books or accounts, viz., a cash book and a ledger.

2. The cash book shall be a simple chronological register, and hence in it shall be entered all receipts and disbursements under the distinct headings prescribed below, day after day, in opposite pages.

3. All receipts shall be entered on the left or debtor side of the book, and all disbursements on the right or creditor side.

Every Court has an account current with suitors and an account current with Government. These two accounts should be kept perfectly distinct.

The headings to be used in the cash book shall be the following:—
(Under Pro. No. 1011 of the 20th May 1870.)

1. Suits.

2. Estates.

3. Miscellaneous Deposits, (money deposited as security by public servants, &c., &c.)

4. Under the *number* of each *suit* shall be entered all sums received from or paid to the plaintiff or defendant respectively, excepting such as are levied for the use of Government, which will come under the head of judicial receipts.

5. The entries under the above heads in the cash book shall be given in full detail.

6. The cash book shall be a bound volume and carefully paged throughout.

7. In the ledger, each heading in the cash book shall appear as an account, and all entries in the cash book shall be posted or re-produced into the ledger accordingly.

8. All entries on the left or debtor side of the cash book shall be posted on the right or creditor side of the ledger; and all entries on the right or creditor side of the cash book shall be posted on the left or debtor side of the ledger.

9. As each posting shall be made, the folios whereto posted in the ledger shall be entered in the cash book, and the folios of the cash book shall in like manner be recorded against the item in the ledger.

10. The ledger shall also be a bound volume and carefully paged throughout.

11. The ledger shall be regularly posted daily.

12. The cash book shall be balanced at the close of each month, *i. e.*, the total of the debits and credits shall be made.

13. The ledger shall be closed at the end of each official year, viz., the 31st March, *i. e.*, the total of both sides of each account shall be made, and the difference or balance between the two sides entered in the deficit side.

14. After the closing of the ledger, all unadjusted heads of account shall re-appear in the ledger for the following year with the opening balance at debit or credit, and the folios in which the account was closed, noted.

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15. The balances at debit or credit of each account resulting on the closure of the ledger, shall be extracted into a statement of assets and liabilities, and the sum total at debit representing the assets of the Court, will equal the sum total of the credits representing the liabilities.

16. At the close of each official year, Civil Judges and Principal Sudr Amins will transmit to the High Court, and District Moonsiffs to the Civil Court, a statement of assets and liabilities copied from the cash book. (Sudr. Pro., 11th September 1861.)

The statement of assets and liabilities are connected solely with deposits on account of suitors. As at present furnished at the end of each calendar year to the High Court by Civil Judges, Judges of Small Cause Courts and Principal Sudr Amins, these statements do not as a rule contain sufficiently detailed information to admit of any comparison being made between the accounts kept by the judicial and the accounts kept by the revenue department. It appears, therefore, to the High Court desirable that an annual statement should be compiled in the Civil Court of each district showing the sums in deposit in the Courts of every grade and submitted to the High Court at the end of the official year. Judges of Small Cause Courts (including Cantonment Courts), Principal Sudr Amins and District Moonsiffs will furnish to the Civil Court of their district, the necessary information to be included in the general return which is to be prepared in the form herewith appended. In submitting this annual return, (and it must invariably be submitted before the court closes for the adjournment), opportunity should be taken to request sanction for crediting to Government sums which have been in deposit for three years and for which there are no claimants.

Then as regards fees, fines, penalties, &c., levied by the Courts and carried to the credit of Government when levied, the High Court understand that the only accounts required to be kept regarding these items are the memoranda, which under the orders of the High Court, dated 21st December 1868 and 9th February 1869, every judicial and magisterial officer is required to send to the Civil and Session Court. It appears to the High Court desirable that these monthly memoranda should be consolidated in one general statement from each district, and transmitted to the High Court monthly with a view to comparing the said accounts with the accounts furnished by the Treasury officers to the Accountant General. In lieu of the form prescribed for use in the Proceedings of the High Court, dated 21st December 1868, the form herewith appended is to be used. Every Civil Judge in communication with the Collector of the district, should fix on what date the accounts in each Court are to be closed. To facilitate comparison with the Revenue Accounts, the most convenient course will probably be for each Court to close the monthly accounts on the same day as or on the day previous to the date on which the monthly accounts of the nearest Treasury are closed. The memorandum should be despatched to the Civil Court or the District Magistrate (as the case may be) immediately that the accounts are closed.

The forms of Chellan and Cheque introduced by the Proceedings dated 28th August 1868 and 13th March 1869, are herewith appended as Forms Nos. 3, 4, 5 and 6, and the headings have been slightly modified.

On the introduction of the Rules contemplated by Act VII. of 1870, Process fees will cease to be collected in money.

When jewelry or other valuables are sent to the Revenue Treasury for safe custody, a descriptive list of such articles should be forwarded to the officer in charge of Treasury for record in his office. (H. Ct. C. No. 112 of the 24th January 1872.)

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FORM No. 1.

Statement of Assets and Liabilities in the Civil Courts in the Zillah of on 187 .

Assets.					Liabilities.					
Court.	Amount in Treasury.	Revenue.			Court.	Heading.	Particulars.	Amount.		
		Rs.	A.	P.				Rs.	A.	P.
Civil ...	In securities ...				Civil ...	Suits ...	O. S., No. 14 of 1864 ...			
Do. ...	In cash ...				Do. ...	do. ...	O. S., No. 17 of 1868 ...			
Do. ...	do. ...				Do. ...	Estates ...	Appasamy, minor ...			
Do. ...	do. ...				Do. ...	do. ...	Ramasamy, deceased ...			
Small Cause Court .	In securities..					Miscellaneous	&c. ...			
Do. ...	In cash ...				Small Cause Court .	Suits ...	do. ...			
Do. ...	do. ...				Do. ...	do. ...	do. ...			
Do. ...	do. ...				Do. ...	Estates ...	do. ...			
Principal Suder Amins ...	In securities ...				Do. ...	do. ...	do. ...			
Do. ...	In cash ..					Miscellaneous	&c. ...			
Do. ...	do. ...				Principal Suder Amin ...	Suits ...	O. S., No. 1 of 1870 ...			
Do. ...	do. ...				Do. ...	do. ...	O. S., No. 2 of 1870 ...			
District Moonsiff of.	do. ...				Do. ...	Estates ...	Lingappen, deceased ...			
Do. ...	do. ...				Do. ...	do. ...	Ramasamy, minor ...			
					District Moonsiff of.	Suits, &c. ...	&c. ...			
					Do. ...	do. ...	&c. ...			

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FORM No. 2.

Statement of Fees, Fines, Penalties, &c., levied in the Judicial and Magisterial Courts in the Zillah of in the month of 187 .

Nature of sum levied.	Civil Court.	Small Cause Court.	Principal Sudr Ameen's Court.	District Moonsiff's Court.	Magistrates.	Total.
Stamp duty on unstamped or insufficiently stamped document.						
Penalties on documents						
Fines and forfeitures.....						
Sale proceeds of unclaimed property.						
Court Fees Stamps						
Process Service Fees						
Total...						
Refunds ...						

FORM No. 3.

Form of Chellan authorizing the Treasury Officer to receive money on account of Judicial Deposits.

To the Officer in charge of Treasury.

Sir,—Please receive from or bearer the sum of rupees and credit the same under the undermentioned head, granting a receipt for the same.

Judicial deposits on account of Original S.

No. of 187 . ... RS. A. P.

Date Sheristadar. Judge.

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FORM No. 4.

Form of Chellan authorizing the Treasury Officer to receive money on account of Government.

To the Officer in charge of the Treasury.

Sir,—Please receive from or bearer the sum of rupees and credit the same under the undermentioned head, granting a receipt for the same in favor of this court.

LAW AND JUSTICE.

	RS.	A.	P.
Penalties on documents.			
Fines and forfeitures.			
Sale proceeds of unclaimed property.			
Court Fees Stamps.			
Process Service Fees.			
STAMPS.			
Stamp duty on unstamped or insufficiently stamped documents.			

Date

Sheristadar. Judge.

FORM No. 5.

Form of Cheque authorizing the Treasury Officer to disburse money on account of Judicial Deposits.

To the Officer in charge of the Treasury.

Sir,—Please pay to or bearer the sum of rupees and debit the same under the head of "Judicial Deposits."

Number of receipts by Treasury Officer.	Dates of Deposits.	Name of Depositor.	Number of Suits.	Total amount in Deposit.

Date

Sheristadar. Judge.

FORM No. 6.

Form of Cheque authorizing the Treasury Officer to disburse money on account of Refunds, &c.

To the Officer in charge of Treasury.

SIR,—Please to pay to or bearer the sum of rupees and debit the same to "Law and Justice" under Refunds and Drawbacks, being the (or part of the) amount remitted to the Treasury of on

Date

Sheristadar. Judge.

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No. 239.

Proceedings of the High Court of Judicature at Madras, 6th February 1871.

It is ordered by the High Court of Judicature that the following form be used under Section 21, Clause (*b*) of Act XVIII of 1869 (General Stamp Act,) and that a book be prepared in the same form for record in each Court as required by Clause (*a*).

Statement of Duties and Penalties levied on Documents unstamped or insufficiently stamped in the Court of from 187 *to* 187 .

Court.	No. of Suit, Original or Appeal	Nature and date of document on which Stamp duty and Penalty was levied.	From whom collected.	Amount collected.				When collected.	When remitted to the collector.	Remarks.
				Stamp duty.		Penalty.				
				RS.	A.	RS.	A.			

17. Two separate accounts of all sums received for processes to be executed by batta amins and batta peons respectively will be kept by the nazir, the figures being entered in English.

18. At the foot of the month's accounts, the nazir or head goomastah will enter an abstract statement, showing, (1) the total number of processes issued, (2) the total batta collected, (3) the number of processes executed by and the amount of batta distributed to each of the amins and peons respectively.

19. A statement showing the amounts paid into the treasury and the amounts withdrawn on account of batta will also be prepared monthly.

20. These accounts are to be submitted at the beginning of each month for the judge's inspection or approval. (Sudr. Pro., 16th August 1860.)

21. Deposits received for service of processes will not be entered in the Court's cash book and ledger. In the treasury accounts they are credited or debited to a Process Service Fund.

22. An annual statement of any surplus arising from collections on account of service of processes is to be submitted to the High Court annually before the end of the official year. (H. C. Pro., 8th July 1868.)

On the introduction of the rules contemplated by Act VII. of 1870, the rules contained in paras. 17 to 22 will cease.

ACQUIESCENCE.

Neither mere knowledge amounts to an *Acquiescence* (II. H. C. Rep. 428); nor the doctrine of *Laches* and *Acquiescence* do apply to suits for which a *period of limitation is provided by Limitation* Act (II. Ibid, 114, 270).

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ADJOURNMENT.

1. The Civil and Session Judges, Judicial commissioner of the Neilgherry Hills, the Judges of Courts of Small Causes and the Principal Sudr Amins are authorized to adjourn their Courts for two months, and the District Munsifs for six weeks in each year.

2. Except by special leave, the adjournment of all the courts in one district must be simultaneous, and may take place at any date between the termination of the April sessions and 15th July. The adjournment of the District Munsifs' courts may take place during the first of the last six weeks of the adjournment of the other courts. The adjournment in any month should commence as soon as possible after the termination of the regular sessions of the month.

3. The date of the adjournment in each case must be reported to the High Court, and the Civil and the Session Judges must at the same time certify that all the business of the Sessions has been disposed of, and that no reference from the Session Court in the case of a capital sentence is pending in the High Court.

4. Judicial Officers leaving the court station during the adjournment will not be entitled to privilege leave, and in no case will the application for such leave be granted or receive the support of the High Court unless under very exceptional circumstances. Further, no District Munsif will be granted privilege leave under any circumstances without some person being appointed to act for him during his absence, except for a few days on very urgent private affairs.

5. During any adjournment of a court, the judge is at liberty to hear and determine any suit or matter, which both parties may be willing that he should so hear and determine.

6. During the adjournment of the courts of every grade, two days in the week at the least shall be set apart and notified in the District Gazette, on which plaints, petitions or other papers will be received in court. The date on which they are presented must be carefully endorsed on them. The chief ministerial officer of every court will be responsible for the due observance of this rule, and will, previously to the adjournment, arrange for some qualified officer being present at the court house on the days and at the hour fixed.

7. During any short or casual adjournment by reason of the absence of the judge, the chief ministerial officer of the court must be daily in attendance at the court house to receive and file all plaints, petitions or other papers presented by parties and see to the due conduct of all ministerial business that can be carried on in the absence of the judge.

8. During adjournments for customary holidays of more than two day's duration, the said officer must arrange for the attendance of a qualified officer at a certain hour of the third, and of each subsequent day, except Christmas day, Good Friday and Sundays (of which hours previous notice shall have been given in the District Gazette), to receive all plaints, petitions or other papers, and carefully to endorse thereon the date of their reception.

9. When the time limited for the presentation of any plaint, petition or other paper expires during any adjournment of the court, such plaint, petition or paper must be presented to the ministerial officer left in charge during the adjournment for the purpose of receiving papers, either within the limited time or on the first day after the expiration of such limited time, when the said ministerial officer shall attend. The adjournment of the court cannot of itself be deemed a sufficient cause for not presenting the plaint, petition or other paper within the limited time, but in every case in which the court has a

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discretionary power in the matter, special circumstances must be shown. When the court has no discretionary power, the time being absolutely fixed by law, the presentation must of course take place within the time so fixed.

☞ During the adjournment of the courts, arrangement to be made (1) for granting copies of judgments, decrees, orders, and other documents to which parties are entitled, (2) for transmitting to the High Court the records in appeals, and (3) for due service and return to the High Court of notices issued to the respondents. (H. C. Q. 11th March 1872.)

10. Every adjournment, not only of a suit but also of any motion, application or other proceeding, must be made to some fixed day, on which day the further consideration thereof must be resumed.

11. Absence of the vakil of a party whether with leave or without, or want of preparation on his part, whether arising from insufficient instructions or otherwise, is not of itself a sufficient ground for the adjournment of a case. The interests of both parties and the particular circumstances of each case must be regarded in dealing with any application for an adjournment. (H. C. Rules, 19th Feb. 1869.)

12. With regard to privilege leave to judicial officers and to those detained on duty during the recess, see G. O. No. 454 of 15th September 1871.

ADVOCATES.

1. Any person possessing the qualifications and producing the certificate or certificates required by any of the four following rules shall be qualified to apply to be admitted and enrolled an advocate of the High Court at Madras.

(*a.*) Any person called to the degree of Barrister-at-law in England or Ireland, or being a member of the Faculty of Advocates in Scotland.

(*b.*) The degree of Bachelor of Laws of the University of Madras and a certificate of having, subsequently to the attaining of such degree, studied for 18 months with an advocate of the High Court at Madras, as also of good character and conduct ; such certificate to be signed by the advocate with whom the applicant shall have studied.

(*c.*) The degree of Master of Laws of the University of Madras, and a certificate, signed by the Registrars on the Original and Appellate sides of the High Court, of regular attendance upon the sittings of the court, in accordance with such rules as the Judges may in that behalf prescribe, for 2 years ; as also a certificate of good character and conduct signed by two advocates of the court.

(*d.*) Any person being an advocate duly admitted, and on the roll of advocates of the High Court at Calcutta or Bombay, and producing the proper certificate of such admission and enrolment, together with a certificate of character or letter of recommendation from a Judge of the High Court of which the applicant is an advocate, or from the Advocate General of the same Presidency. (H. C. Rules, 1st October 1863.)

2. Advocates, vakils and attorneys-at-law of the High Court are entitled to practise in all the civil and criminal courts subject to the control of the High Court. (H. C. Pro., 31st October 1863.)

3. The effect of the 2nd exemption in Clause 7, Schedule B, Act XXVI. of 1867, is to relieve advocates of the High Court from the necessity of filing a vakalatnama or other written authority in any court. (H. C. Pro., 27th November 1868.)

4. The incapacity to incur any legal obligation is attached not simply to the degree of barrister, but to the barrister who in the char-

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acter and capacity of advocate is entitled to appear and plead on behalf of clients. (4 H. C. Rep., 244.)

5. Advocates pleading in any lower court in which the language of the Judge is *English* may address the court in that language, the Judge making arrangements for the interpretation, if necessary, of such address to the pleader on the other side. (Sudr Pro., 22nd July 1858.)

6. An enrolled advocate of the High Court, practising in a district court, could not be regarded as a vakil and punished under Regulation XXV. of 1816. (H. C. Pro., 13th July 1871, in Mr. Mutu Kista's case.)

APPEALS FROM DECREES.

1. The period limited for appealing will be reckoned from the date on which the judgment was pronounced, provided that if application for a copy of the decree be made within the appeal time, a day will be added for every day's delay in furnishing such copy which may not be attributable to the party. (Sudr Pro., 6th September 1860.)

2. Where a party fails to put in a sufficient number of stamps with his application for certified copy of any decree or order, any delay which may occur in producing the remaining stamps, after notice to produce the same, will be attributable to the party in calculating the time limited for appealing. (Sudr Pro., 21st April 1860.)

3. In calculating the time for appealing under Section 333 of the Code, the courts are not to take the corresponding date in the calendar month, but to reckon the *number of days* allowed by the Code. (Sudr Pro., 6th September 1860.)

4. When the period limited for appealing may expire between any two court days, the appeal will be considered to have been put in within time, if presented on the court day next succeeding the date so limited. (Sudr Pro., 30th November 1831.)

5. The period occupied in disposing of an application for review will be added to the time allowed for appealing, provided such application shall have been put in before the expiration of the appeal time. (Sudr Pro., 6th September 1860.)

6. No extension of the time limited for appealing can, under Section 333 of the Code, be granted *beforehand* for the purpose of preparing an appeal: any party desiring to present an appeal after the expiration of such limited time, is to put in the appeal with a petition on the usual stamp, explaining the cause of delay and praying the court to receive his appeal. (Sudr Pro., 21st April 1860.)

7. The costs adjudged by the lower court are not to be considered as part of the amount in issue in appeal, notwithstanding that a merely nominal sum may have been decreed exclusive of costs. (Sudr Pro. 5th December 1860.)

8. In transmitting to an appellate court all material papers in a regular appeal, the lower court should forward copy of its judgment, but not of its decree; and merely formal papers, such as vakalatnamahs, notices, summonses, proclamations, warrants, security or bail bonds, commissions, &c., should be omitted. (Sudr Pro., 3rd April 1860.)

9. In transmitting to the High Court all material papers in a special appeal, the lower appellate court need not include the original or appeal judgments and decrees, which must be produced by the special appellant, nor any merely formal papers. (Sudr Pro., 3rd April 1860.)

10. The list of material papers transmitted to the appellate court

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is to specify each paper according to its order in the suit, *e. g.*, 'Plaint,' 'Written Statement of Defendant,' 'Depositions of witnesses first to ninth,' 'Plaintiff's Exhibits A to F,' 'Defendants Exhibits 1 to 3.' (Sudr Pro., 5th December 1860.)

11. The presiding officers of the courts should exercise some control over their subordinates in sending up *all* the material papers. (H. C. Pro., 23rd January 1867.)

12. Extracts from the diaries kept by the lower courts relating to the case should in all cases be submitted. (H. C. Pro., 12th February 1868.)

13. Where papers belonging to other suits have been referred to in the judgment of the lower court, copies of all such papers are invariably to be transmitted to the appellate court with the material papers of the suit. (Sudr Pro., 3rd May 1861.)

14. An appellant has no right to withdraw an appeal which has been regularly registered, without the permission of the court. (3, H. C. Rep., 368.)

15. When in the course of the hearing of an appeal, the appellant desired to withdraw in order to avoid the decision of a question raised by the respondent at the hearing: *Held*, that under Section 348 of the Code, the respondent was entitled to have the question heard and determined. (3, H C. Rep., 302.)

16. Section 348 of the Code is as applicable to special as to regular appeals. (3, H. C. Rep., 216.)

17. Where a decree is passed *ex-parte* in an original suit, the defendant has no right to a special appeal even though his appeal has been entertained by the lower appellate court. (1, H. C. Rep., 189.)

18. A party to a suit against whom a judgment *ex-parte* has been passed in regular appeal, cannot prefer a special appeal from that judgment. He must first proceed under Section 119 of the Code to get rid of the *ex-parte* judgment against him. (3, H. C. Rep., 109.)

But a special appeal lies from an order passed under Section 346 dismissing the appeal for non-appearance of the appellant. (6, H. C. Rep., 1.)

19. There is no foundation for the opinion that an appellate court has no authority to interfere with the discretion of the lower court as to costs. (3, H. C. Rep., 113.)

20. Though the distribution of costs is, under the Code, a matter within the discretion of the court, yet there may be circumstances which will justify an appeal upon a mere question of costs. (3, H. C. Rep., 279.)

21. Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by Section 187 of Act VIII. of 1859 should not, unless in a very exceptional case, be interfered with by the appellate court. (1, H. C Rep., 74.)

22. A Civil Court in hearing an appeal from the decision of a Collector under Madras Act VIII. of 1865 must be guided by the Civil Procedure Code. (4, H. C. Rep., 251) and such appeals cannot be referred to the Principal Sudr Ameens. (Ibid 227.)

23. The High Court will not interfere, on appeal, with the decree of the lower court dismissing a plaintiff's suit under Section 170 of the Code on the ground of his refusing to answer a question material to the case when duly required to do so. *Semble* it might be otherwise had plaintiff, since decree, endeavoured to purge his contempt. (3, H. C. Rep., 299.)

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24. When an appellate court appears not to have taken into its consideration a presumption of fact arising out of the circumstances in evidence and materially affecting the decision of the case, that is such *defect* as the High Court will remedy on special appeal by directing an issue. (1, H. C. Rep., 131.)

25. Under Section 45 of the Code, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader." What may be "sufficient time" in a particular case, can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an appellate court will interfere. (3, H. C. Rep., 167.)

26. The following rates will be charged for suitors printing on the appellate side of the high court. The appellant will be charged at the rate of *twelve annas* per page, and respondent at the rate of *eight annas* per page, of printed matter. The appellant will be required to deposit with his memorandum of appeal,

	Rs.	A.
In regular appeal	7	8
In special appeal	5	0
In a civil miscellaneous appeal	2	0

and when the printed paper is ready he will pay the balance due. In no case will any refund be made although the deposit may be in excess of the amount chargeable under above rule. If an appellant or respondent requires papers (other than those usually printed) to be printed, the charge will be at the rate of *one rupee and four annas* per page of printed matter. The appellant and respondent may agree together to divide the cost. No deposit will be required (C. O. 18th May 1872, No. 964.)

APPEALS FROM ORDERS.

1. No appeal from an order will be received unless it be accompanied, at the time of presentation, by an authenticated copy of such order, and of all other orders relating to the same matter. (Sudr Pro., 3rd October 1854, No. 133.)

2. When appeals against an order in execution of a decree have been preferred to the High Court, the court by which the order was passed is required to send up the decree and all papers connected with the order, together with a statement setting out briefly all the matters of fact upon which the order was passed and the dates of every step in the proceedings. (H. C. Gen. Rule, 16th December 1868.)

3. No one but a party to a suit can appeal under Section 11 of Act XXIII of 1861 against an order passed in such suit. (1, H. C. Rep., 8.)

4. A special appeal lies to the High Court from orders passed in the matter of execution of decrees. *Semble*, whenever there is a right of appeal against orders, there is a further right of special appeal to the High Court. (4, H. C. Rep., 32.)

5. Unless there be some express provision of the Code under which an appeal preferred by a party from the order of a lower court can be received, such appeal must be rejected. (Sudr Pro., 13th July 1861.)

6. An order passed under Section 378 of the Code being final, any proceedings held in the appellate court on the application of any of the parties are void *ab initio*. (Sudr Pro., 10th April 1861.)

7. An appeal will not lie against an order refusing to appoint a receiver under Section 92 of the Code. (1, H. C. Rep., 129.)

8. No appeal lies from an order of a judge proceeding under Act XIX of 1841. The fact that the Judge may have rejected evidence

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which ought to have been received and considered, does not warrant the High Court in interfering to set aside an order of such judge. (2, H. C. Rep., 418.)

9. Where a civil judge upon a petition applying under Section 18 of Act XX of 1863 for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor reversing the former order decided by an order upon the rights of the parties: *Held* that though both orders were made without jurisdiction, that fact does not give the High Court an appellate jurisdiction in the matter. (3, H. C. Rep., 92.)

10. No appeal lies from an order directing that an agreement to submit matters in dispute to arbitration should be filed under the provisions of Section 326 of the Code. (3, H. C. Rep., 183.)

11. No appeal lies from an order passed before decree under Section 73 of the Code of Civil Procedure, except in case of an appeal from the decree itself as provided for in Section 363. (4, H. C. Rep., 22.

No appeal lies from an order passed under Section 273, Act VIII of 1859 and Section 8, Act XXIII of 1861. (Civil Mis. S. A. 30 of 1871.)

APPEALS TO THE QUEEN IN COUNCIL.

1. No appeal to Her Majesty, her heirs and successors in Council shall be allowed by any of Her Majesty's High Courts in India unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree or decretal order complained of and unless the value of the matter in dispute in such appeal shall amount to the sum of ten thousand Company's rupees at least.

2. In all cases in which any High Court shall admit an appeal to Her Majesty, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of ten thousand rupees or upwards, which certificate shall be deemed conclusive of the fact and not be liable to be questioned on such appeal by any party to the suit appealed.

3. Provided nevertheless that upon the petition of any party aggrieved by any judgment, decree or decretal order of any of the aforesaid courts, it shall be lawful to Her Majesty to admit an appeal therefrom upon such other terms and upon and subject to such other limitations, restriction and regulations as Her Majesty, &c., shall think fit to prescribe. (Order of Privy Council, 10th April 1838.)

4. The value of the matter in dispute is to be calculated according to the general rules for determining the value of property. (Sudr Court Rule of Practice.)

5. In estimating the appealable value, interest given by decree is to be added to the principal. (VIII, Moore, 164.)

6. It is discretionary with the High Court to allow or disallow an appeal where the amount can only be reached by the addition of interest accruing subsequent to the decree. (VIII, Moore, 166.)

7. The costs of the suit are not to be added to the principal sum in estimating the appealable value. (VIII, Moore, 262.)

8. If there be any doubt whether the value of the matter in dispute amounts to ten thousand rupees, the lower court will be required to enquire into and report upon the subject. (Sudr Pro., 26th November 1859.)

9. No petition of appeal to Her Majesty from a decree of the Sudder Court will be allowed, unless a sum of Rupees 4,000 as security for the

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eventual costs of the respondent and Rupees 400 (to be afterwards increased if required) to meet the expense of preparing the record, be deposited within such time as the court shall grant for the purpose.

10. Where there may be grounds for questioning the sufficiency of the ordinary amount of security, it will be open to the respondent to move that a higher amount be required, and the registrar will determine what further sum, if any, the appellant is to deposit; provided, that in no case shall a larger amount be demanded than Rupees 10,000.

11. Should the appellant fail to provide such additional security, or such further deposit as the registrar may require, within six weeks from the date of receiving notice to deposit the same, the appeal will be disallowed. (Sudr Pro., 26th November 1859.)

12. Where an appeal to Her Majesty may be allowed, a list of the papers proposed to be translated and copied is to be prepared in the registrar's office, and any objections or suggestions which the parties or their pleaders may have to offer, are to be made within two weeks from the date of their receiving intimation of such list having been prepared.

13. As soon as the requisite deposits have been made, one or more competent translators will be appointed to translate the record; for which they are to receive payment at the rate of one rupee for every page of the original, containing two hundred and forty words, which they may translate.

14. The translators so employed will be required to execute their translations in the office, and for this purpose will be relieved from their regular duties, which will be performed by translators temporarily appointed.

15. On the completion of the translation, the appellant may, if he desires to have the papers printed in India, obtain them in their rough state; in which case the Press proofs are to be sent to the registrar's office for correction. In other cases, the papers are to be fair copied in the office, and the party will be charged one rupee for every five pages.

16. The charge for examining records in appeals to Her Majesty will be two annas per page for print, and one and a half anna per page for manuscript.

17. The charge for reading to the examiners will be at the rate of half an anna for every page of manuscript.

ARBITRATION.

1. Whenever a subordinate public servant is required to serve as an arbitrator, the head of his department is to be requested to mention the most convenient day for his attendance, and the summonses to the several arbitrators are to be prepared accordingly. (Sadr Letter, 15th October 1824.)

2. Section 313 of the Code does not apply where a reference is agreed to at and during the hearing. (I, H. C. Rep. 106.)

3. Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award, unless the submission to arbitration has been made rule of court under Section 326 of the Code. (III. H. C. Rep., 82.)

4. The fact of one of the parties to the agreement revoking his submission is not a "sufficient cause" within the meaning of Section 326 of the Code. (III. H. C. Rep., 183.)

5. The validity of an award cannot be impeached because the arbitrators afterwards do an act as required neither by the law nor the terms of submission. (I, H. C. Rep. 178.)

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6. A suit lies to enforce an award made without intervention of a court. (IV. H. C. Rep., 119.)

7. In submitting the matter in dispute to arbitration, a party stipulated, which was unobjected by the opposite party, that an umpire should be selected from the men whom he named. The court of its own motion appointed a person as umpire who was not one of those named by the stipulated party. *Held* the award was not valid. (VII. H. C. Rep., 72.)

ASSIGNMENT.

1. A valid assignment having been made, the assignee's right of action upon the bond assigned is against the obligor only; and the obligee is not liable to be made a party in the suit by the assignee. (I. H. C. Rep., 140, 150; IV. Ibid, 176.)

2. Obligor's consent is not necessary for the assignment of a bond. (I. H. C. Rep., 139.)

ATTORNEYS-AT-LAW.

1. Any person possessing the qualifications and producing the certificates or certificate required by any of the following rules, shall be qualified to apply to be admitted and enrolled an Attorney-at-law of the High Court at Madras, but subject, in the case of an applicant for admission under Rules (*b*), (*c*) and (*f*), to his passing such examination as to his professional competency as the High Court shall direct. Provided that it shall be necessary in every case to give two months' notice of the intended application for admission, by publication in the gazette and by affixing a copy of the same on the notice-board at the court-house.

(*a*) Admission and enrolment as an attorney or solicitor in one of Her Majesty's Courts at Westminster or Dublin with the proper certificate of such admission and enrolment: as also a certificate of good character and ability signed by the master or masters with whom the applicant shall have served his clerkship in England or Ireland.

(*b*.) Matriculation at any of the Indian Universities, and service as articled clerk to an attorney of any of the High Courts of Judicature in India for 4 years, with a certificate of good character and ability signed by the master or masters with whom the applicant shall have served his clerkship, subject to examination as above provided.

(*c*.) Service for the period of 7 years as registrar or assistant registrar on the Original Side of the High Court at Madras, or as judges' clerk; or the same period of service in any two of the said offices, subject to examination as above provided.

(*d*.) The degree of Bachelor of Laws of any Indian University, and service as articled clerk to an attorney of any of the High Courts of Judicature in India for 2 years, subsequently to the attaining of such degree; or for 5 years either as registrar or assistant registrar on the Original Side of the High Court at Madras, or as judges' clerk, or in any two of such offices; with a certificate in the former case of good character and conduct signed by the master or masters with whom the applicant shall have served his clerkship.

(*e*.) Any person being an attorney duly admitted and on the roll of Attorneys of the High Court at Calcutta or Bombay, and producing the proper certificate of such admission and enrolment; as also a certificate of good character and conduct signed by a judge of the High Court, or the Advocate General, or two of the leading advocates in practice in the High Court of which the applicant is an attorney.

(*f*.) Any person who was, with the privity and consent of the late Supreme Court, under service as an articled clerk to an attorney of

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the said court, on the 15th August 1862, after he shall have served the full period of 5 years for which he was articled, subject to his passing an examination as above provided. (H. C. Rules, 1st October 1863.)

2. Attorneys-at-law of the High Court are entitled to practice in all the civil and criminal courts subject to the control of the High Court. (H. C. Pro., 31st October 1863.)

3. Attorneys pleading in any lower court in which the language of the judge is *English*, may address the court in that language, the judge making arrangements for the interpretation, if necessary, of such address to the pleader on the other side. (Sudr Pro., 22nd July 1858.)

BATTA ESTABLISHMENT.

1. Judicial processes (when not specially entrusted to an officer of the court) are to be executed either by batta amins or by batta peons, according to the nature of each process.

2. Every warrant for delivery of possession of immovable property, or for the attachment of property by actual seizure or for the sale of property, whether movable or immovable, on the spot where it was attached, is to be executed by batta amins.

3. Every summons, notice, written order, warrant of arrest, injunction and proclamation, is to be served by batta peons.

4. Where service is to be made upon the party's pleader, or upon a public servant at the court station, the process should be delivered to a messenger or other officer of the court and not to a batta peon.

5. The batta amins and peons will be appointed by the judge, and will then be under the control of the nazir.

6. No person is to be appointed a batta amin who is unable to read and write and keep accounts.

7. The nazir will keep a register, in which he is to enter the name of each batta amin according to the order of his admission, and a similar register of the batta peons.

8. Batta amins are not to be required to wear any badge or belt. (Sudr Pro., 8th October 1860.)

9. The belts and badges of batta peons are to be provided by the peons themselves. (Sudr Pro., 16th August 1860.)

10. No batta amin or peon is to be employed in any of the duties of the regular establishment, or in attending upon the judge.

11. Any amin or peon making unnecessary delay in the service of processes, or absenting himself without leave, will be liable to be fined.

12. Any amin or peon guilty of insulting a suitor or receiving a fee, or of committing any gross act of misconduct, will be liable to dismissal.

13. No amin or peon is to be fined or dismissed, except under the express authority of the Judge.

14. The orders of the court respecting the appointment, punishment and dismissal of batta amins and peons, will not be subject to appeal.

15. Whenever the number of amins or peons has to be reduced, those who were last admitted are to be first discharged.

16. No process is to be delivered to an amin or peon for execution until the prescribed charge has been paid. (Sudr Pro., 16th August 1860.)

17. It will be the duty of judicial officers to prevent undue favor being shown to particular individuals and to hold the nazirs of the chief ministerial officers of their courts responsible for any irregulari-

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ty in the distribution of processes to the several peons and amins strictly in their turn. (H. C. Pro., 24th February 1864.)

18. To ensure an equal distribution of the processes, a roster is to be kept and each process is to be delivered for execution to the amin whose name appears at the head of the roster, after which his name is to be erased and entered at the bottom on his return from executing the process, the same course being pursued in the case of each amin as he becomes available for duty. A similar roster is to be kept for the peons.

19. No amin is to be entrusted with the execution of more than one warrant at a time, nor are more amins than one to be employed in executing the same warrant except under special circumstances.

20. Warrants of arrest may, for any special reasons, be ordered to be executed by two peons in company; all other processes are to be entrusted to a single peon.

21. The rates payable to batta amins and peons will be as follows:—To batta amins, 6 annas per day. To batta peons, 4 annas per day.

22. Batta peons will be required to travel 15 miles a day, and will be entitled to batta for the number of days occupied in proceeding to and returning from the place of residence of the person to be served, and for remaining one day at such place. When service has to be effected within three miles of the court house, a day's batta will alone be payable. The batta is to be disbursed to the peon or amin immediately he returns the process duly executed, or satisfies the court that by reason of the absence of the party, or from other sufficient cause, he has been unable to effect the service.

23. If two or more such processes as are to be entrusted to batta peons, have to be served on members of the same family living together, and in the same suit or in connected suits, the full batta will be payable upon only one such process, and the rest will be served without further charge. (Sudr Pro., 16th August 1860.)

24. The batta payable by a defendant who has applied for discharge after arrest under Section 273 of the Code, and is left in the custody of the batta peon, will be at the rate of four annas per diem; a week's batta to be deposited in advance, and to be renewed at the same intervals until the inquiry is closed; failing which, the defendant is to be committed to prison. (Sudr Pro., 8th October 1860.)

25. Warrants for the execution of decrees passed by village munsiffs are to be executed by batta peons, and the charge is to be two annas per diem. (Sudr Pro., 25th January 1861.)

26. None of the court servants, except the nazir, is to be in any way employed upon duties connected with the enforcement of these rules.

27. In courts where there is no nazir, the duties assigned to this officer will be performed by the head gumastahs.

28. Batta peons will be required to attend also during the adjournment of court. (H. Ct. Letter, No. 508 of 14th March 1872.)

☞ On the introduction of the rules contemplated by Act VII. of 1870, the above rules will cease to operate.

CAUSE OF ACTION.

1. *Per Bittleston, J.*—The cause of action means the whole cause of action. The whole cause of action includes every fact essential to the maintenance of the action, and each of these facts separately is but a part of the cause of action. The charter of the High Court refers

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to a cause of action arising wholly or in part within the local limits. The cause of action spoken of may consist of several parts, which parts may arise in different places.

Per Holloway, J.—Irrespectively of the domicile of the defendant, there is a competent forum wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action. (3, H. C. Rep., 384.)

2. Where a statute imposes a duty, without express words, gives an action for the failing to perform that duty and for wrongfully performing it. (II. H. C. Rep., 35.)

3. To sustain an action for negligence, there must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury. To sustain an action for malicious prosecution, the prosecution must have been malicious and without reasonable or probable cause. (II, H. C. Rep., 158.)

4. Wilful abuse of his authority by a judge, that is, wilfully acting beyond his jurisdiction, is a good cause of action by the party who is thereby injured. (II, H. C. Rep., 443.)

5. A suit ought not to be entertained where the plaintiff who merely seeks for a declaration of title, is in possession of all his alleged rights and is not in a position to bring an action. (II, H. C. Rep., 333.)

6. Where the defendant alienated property in which he had merely a life interest: *Held*, that the plaintiff was entitled to a decree declaratory of his title under Section 15 of the Code. (II, H. C. Rep., 378.)

7. A plaintiff who has not a present right to possession, cannot sue to eject. (II, H. C. Rep, 386.)

8. Where a judgment debt was satisfied out of court and the creditor afterwards fraudulently applied for execution: *Held*, that a suit to recover the amount *overpaid* was not maintainable. (III, H.C. Rep., 188.)

☞ Nor a suit to recover the amount paid *previously* to the execution of the decree maintainable (H. C. Judgment in Ref. case No. 47 of 1871.) In the case of Arunachela Pillai v. Appavoo Pillai, where A owed B a judgment debt, A paid the debt, but not through the court. B then fraudulently applied to the court to execute the decree, and the court being debarred by S. 206 Act VIII of 1859 from recognizing payment made otherwise than through it, executed the decree by making A pay again the sum decreed. A sued to recover the amount *overpaid*: *Held*, by the majority (Bittleston, Holloway, and Collet. J.J. J) of the court (Scotland, C. J., and Innes, J. dissenting) that such a suit is not maintainable (III H. C. Rep. 188.) This judgment, when referred to the Full Bench of the Calcutta High Court (Couch, C. J. and Kemp, L. S. Jackson, and D. Mitter, J. J. J.) in the case of Gunamani Dasi, V. Prankishori Dasi; the court said that the case of the Madras High court, above alluded to seems to have been treated as if it was a suit not to recover money originally paid, but to recover back the money levied in the execution of decree; and that therefore a suit to recover back the money first paid was maintainable (11th May 1870 V, B. L. R. part XXV. V. Madras Jurist 428). Subsequently a case was referred to Madras High Court, No. 47 of 1871, Rangappah *v.* Mudrangappah, quoting the judgment of the Calcutta High Court, above alluded to, requesting the opinion whether a suit to recover the amount *previously* paid out of court was maintainable? Held by the High Court (Innes and Kindersley, J. J.) that this case appeared *not* to be distinguishable from that at III. H. C. R. 188.

9. A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in

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the hands of the co-parceners from whom it is sought to recover it. (III, H. C. Rep., 94.)

10. A suit may be brought in any civil court having jurisdiction, for the recovery of a sum awarded by the judgment of a foreign court, the decree of the foreign court being the cause of action. (Sadr Pro., 16th June 1857.)

11. A suit may be maintained against a surety according to Hindu Law, although the principal debtor has not been sued. (IV, H.C. Rep., 190.)

12. Several claims, each of which separately is within the Small Cause jurisdiction of a district munsif, may be joined together and form the basis of a suit in the Small Cause Court.

The plaintiff was the lessor and the defendant the lessee of certain land under an agreement whereby the defendant agreed to occupy the land for two years and to deliver a certain quantity of paddy at four specified periods. Defendant failed to deliver the paddy.

In a suit for rent: *Held*, that although the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalment should be deemed one cause of action. (IV. H. C. Rep., 334, and V. Ibid, 287.)

13. A civil court has jurisdiction to determine a suit where the defendants dwell, *or* the cause of action arises within the jurisdiction of the court. (VI, H. C. Rep., 43.)

14. Where a partnership business was carried on partly at Hyderabad and partly at Madras, the High Court entertained a suit arising out of the partnership transaction, although the defendant was a non-resident foreigner within the Nizam's dominion. (IV. H. C. Rep., 216.)

15. In a suit to recover the value of goods sold in Madras, but delivered outside the local limits of Madras, the court *Held*, that the cause of action having arisen at the place where delivery took place the High Court had no jurisdiction. (I. Ibid 200.)

16. Where the payee sued the maker of a note which was dated "Madras, 27th September 1860," and delivered to the plaintiff at Madras though the defendant had signed the note at Secunderabad, whence he had sent it by post to plaintiff: *Held*, that the cause of action arose at the place where delivery took place. (I, Ibid 202.)

17. A right being once established, every obstruction of it gives rise to a fresh cause of action for damages for trespass. (IV H. C. Rep., 349.)

18. The plaintiff cannot sue unless the cause of action had accrued before the institution of the suit; his becoming acquainted with the fact subsequent to the suit will not entitle him to recover in the suit. (III. H. C. Rep. 111.)

19. To maintain a declaratory suit, some adverse act intended and calculated to be prejudicial to the title which the plaintiff seeks, a declaration of must appear to have been done by defendant. The mere denial of title or doing an act which causes annoyance or cannot imperil the plaintiff's title, nor have any serious effect on the quiet enjoyment of his proprietory right, is not sufficient cause to support such an action (VI, H. C. Rep., 307.)

CERTIFICATE OF HEIRSHIP.

1. Certificates under Act XXVII of 1860 can only be granted to persons claiming to be representatives of deceased persons to enable them to recover debts and receive interest or dividends: but such certificate concludes only the debtors of the estate, and the procedure given by the Act was not intended to apply to the decision of any right to succeed to the estate of a deceased person. (II, H.C. Rep. 164.)

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2. If there are two or more claimants for a certificate, an investigation should be held into their respective claims before the certificate is granted or refused. (Judgment in Civil Petition, 138 of 1867.)

3. If a civil court is proceeding under Section 8 of Act XXVII of 1860 to grant or has granted a certificate authorizing a person to deal with Government securities which are claimed by a third person as his property, that is a ground on which such third person may come into court to oppose the grant of a certificate or to seek for its cancelment. (IV. H. C. Rep., 180.)

4. A certificate under Act XXVII of 1860 is not necessary to give to a person claiming to be the representative of the deceased creditor the right to institute a suit to recover a debt: or the right to present an application for the execution of a decree. But such certificate must be produced before a decree or an order for execution of a decree can be passed, except under Section 2, Act XXVII. of 1860.

The validity of a certificate once granted is unaffected by the provision laid down in the note to article 12 of the First Schedule to the Court Fees' Act (VII of 1870.) The object of the said provision is not to prevent the realization of monies due by means of an existing certificate; but to secure payment of stamp revenue on all sums so realized in excess of the amount in respect of which the certificate was granted.

The power of cancellation is given only upon its appearing from the statement on oath required of the certificated representative that the monies received under certificate exceed the amount sworn to on the granting of it; and in case of default on the part of the representative by not filing such statement within the time allowed. Until cancellation has taken place, the certificate remains in full force. (Judgment in Ref. Case 10 of 1871, VI. M. H. C. Rep., 121.)

5. The tax (for certificates under Act XXVII of 1860) under Art. 12, Sch. I, Act VII of 1870, is upon the whole amount; and not upon the excess of Rupees 1,000 over the sum which would exempt the certificates. (V. H. C. Rep., 45.)

6. Where the succession to the deceased obligee is disputed the obligor of a bond is justified in refusing payment until the production of certificate. (I. H. C. Rep. 124.)

COMMISSIONER.

1. No commission for a local investigation (Section 180) or for the investigation or adjustment of accounts (Section 181) is to be addressed by any civil court to any magistrate in office except for special reasons and when no other commissioner is available: and whenever a magistrate be chosen as commissioner, the time allowed for the execution of the commission must be sufficiently long to admit of the magistrate's superior addressing the court, if he shall see fit, with a view to the withdrawal of the commission on the ground of inconvenience to the public service. (H. C. Gen. Rule, 16th November 1868.)

2. The scale of remuneration for commissioners under Section 182 of the Code, is left to the court's discretion, and will depend upon the circumstances of each case, such as the nature of the accounts, whether simple or complicated, the time required for their investigation and the qualifications of the commissioner, a higher remuneration being necessarily payable if a professional person be employed. (Sudr Pro., 16th April 1860.)

3. Where a commissioner appointed under Section 181 of the Code to investigate the state of accounts between a debtor and a

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creditor, made his report, on which the judgment appealed against was founded, the High Court on a regular appeal refused to take a fresh account. (I, H. C. Rep., 1)

4. The appellate court will not enter into the details of the account of a commissioner appointed under Section 181 of the Code. A party cannot be heard in the appellate court upon items to which he took no objection in the court below. But where there has been error in the principle upon which such account has been taken, the appellate court will correct such error. (I, H. C. Rep., 418.)

Although a commissioner's Report should have very great weight attached to it, it is not absolutely binding. (VI. H. C. Rep., 26; I H. C. Rep., 418, dissented from.)

CONSTRUCTION.

1. A special enactment is not impliedly repealed by a subsequent affirmative general enactment, if the two enactments are not so repugnant as to be incapable of standing together. (I, H. C. Rep., 115.)

2. A rule of construction is that the enacting words of a statute may be carried beyond the preamble if words be found in the former strong enough for the purpose. (II. H. C. Rep., 322.)

3. In construing powers of attorney, the special purpose for which the powers are given is first to be regarded, and the most general words following the declaration of that special purpose will be construed to be merely all such powers as are needed for its effectuation. (II. H. C. Rep., 177.)

COPIES.

1. Parties who have paid the regulated charges for printing in the High Court, will be supplied, on application, with one printed copy for each pleader retained by them.

2. Other parties will be charged for printed copies at the rate of two pies per line for the first copy taken, and one anna a printed page for every additional copy; but if more than one copy be required, notice of the same in writing must be given to the deputy registrar any time before the proof sheets are received from the press.

3. Where any paper in the High Court, of which a copy may be applied for, may be one of a description of papers which are usually printed, no other than a printed copy thereof will be given.

4. Where a special appeal is rejected, the judgments and decrees put in with the application may be returned to the party, without requiring any copies to be left in their place.

5. Applications for copies of records should be received by the sheristadar every court day without reference to whether the court be sitting as a civil or criminal court.

6. It will be the duty of the sheristadar to see whether the application when made is one which requires the order of the judge, and if so to apply for it.

7. In the courts of the district moonsifs, the head gumastah will receive applications, &c. (H. C. Pro., 19th June 1866.)

8. All applications for copies are to be registered and attended to strictly according to their order of presentation. (Sudr Pro. 31st March 1860.)

9. Parties to proceedings before the courts are entitled to copies of each proceeding as a matter of course, and such copies should generally be prepared at once on application without the order of the presiding judge.

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10. In all cases where judgments are written in English, none but English copies of the same are to be received by the appellate courts, and parties applying for authenticated copies of such judgments are to be required to take them in that language; but they will be entitled also to obtain, on payment, copies of the vernacular translations for private use or reference. (Sudr Pro., 16th January 1861.)

11. Persons requiring copies of records connected with any civil suit or proceeding to which they were no parties, may move the court by petition to furnish them with the same. (Sudr Pro., 21st March 1860.)

12. If it appear that the applicant is affected by the record in question, or that he requires it for use in any judicial proceeding, the copy may be furnished accordingly. (Sudr Pro., 21st March 1860.)

13. Authenticated or unauthenticated copies will be furnished subject to the law in force relating to stamps at the option of the applicant, the only difference being that in the former case a higher fee will be levied for copying and an additional fee for examining. Copies which the law requires to be on stamp paper will in all cases be authenticated.

14. An application is to be presented in court either by the party or his pleader, particularizing the parties' name, his position in the suit or proceeding, and the record of which he desires a copy.

15. The application must be accompanied by the paper on which the copy is to be made, which in the case of plain paper must be of the quality generally used in the court.

16. No suitor or pleader will be allowed to make copies of records, whether personally or by his gumastah or private agent.

17. The charge for unauthenticated copies will be one pie for two lines, and for authenticated copies one pie per line. (H. C. Pro., 20th November 1863.)

18. No copy is to be delivered to the party applying for it until the regulated charge shall have been recovered.

19. All copies are to be made under the immediate superintendence of the sheristadar, or other head ministerial officer, by authorized copyists, who are to be selected from among the passed candidates, where such may offer themselves.

20. No copyist is to be appointed or removed, otherwise than under the express orders of the judge.

21. The number of copyists to be employed will depend upon the local demand for copies, and will be so regulated that each may earn about seven rupees per mensem, and that the copies may be delivered within five days from the date of application.

22. When there may be a greater demand for copies than the regular copyists can prepare without falling into arrears, additional copyists will be temporarily employed, and will be remunerated at the same rate as the regular copyists. (Sudr Pro., 21st March 1860.)

23. The copyists are to perform their duties in the same room with the regular establishment, and not on any account whatever to remove therefrom any record delivered to them to be copied.

24. No suitor or pleader will be allowed to hold any communication with the copyists.

25. To ensure copies being carefully and legibly written, not more than eight or ten pages should be given to each copyist in a day. (Sudr Pro., 25th September 1860.)

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26. Each copyist is to provide his own ink and pens, and no deduction is to be made from the earnings of the copyists for that or any other purpose whatsoever.

27. Copyists are not to be required to prepare any copies for which they cannot receive remuneration, and are never to be employed upon any business which properly devolves upon the regular establishment.

28. Copies of records applied for by parties are not to be made by the regular establishment, but by the copyists only.

29 Sums due for copies are to be collected only by the chief ministerial officer, who is to keep a register showing under different columns, each applicant's name, the nature of the record, date of the application, date of delivery, number of pages, whether a certified copy or not, the fee charged, and the copyist's receipt.

30. No account of receipts and disbursements is to be kept, but every sum is immediately on its receipt, to be paid to the copyist, and his signature taken in the register as an acknowledgment that he has been paid.

31. The register of each court is from time to time to be examined by the presiding judge, and due measures taken to check any irregularities which may thus come to his notice. (Sudr Pro., 21st March 1860.)

32. The district munsifs are to transmit annually for the inspection of the civil judge their original registers for the previous twelve months.

33. All copies requiring authentication are to be examined by one of the chief ministerial officers' assistants, or by one of the writers, if in English, before they are certified. (Sudr Pro., 21st March 1860.)

34. The correctness of vernacular copies of proceedings may be certified by the sheristadar, or in the munsifs' courts by the Head Gumastah.

35. That of English copies prepared in the civil court may be certified by the head writer and sheristadar jointly. (H. C. Pro., 18th June 1856.)

36. Copies not requiring authentication are not to be examined, but if it be discovered that any copyist has been guilty of negligence in making grossly inaccurate copies, he will be liable to dismissal.

37. The charge for examining authenticated copies will be one pie for every four lines. (H. C. Pro., 20th November 1863.)

38. No other particulars are to be appended to authenticated copies of decrees and orders appealable to the High Court, than (1) date on which the copy was applied for, (2) date on which any additional stamps may have been called for, (3) date on which such additional stamps may have been furnished, (4) date on which any petition for review may have been presented, (5) date on which the order on such petition may have been passed, (6) date on which the copy was ready for delivery. (Sudr Pro., 25th January 1861.)

39. Whenever application may be made for an authenticated copy of any decree passed on regular appeal in any suit of the nature of those cognizable by Courts of Small Causes, and wherein the claim may not exceed Rupees 500, a note to the following effect is to be appended to such copy: "Under* Section I, Act XLIII of 1860, no special appeal lies from this decree." (Sudr Pro., 3rd November 1860.)

40. A note is to be entered on the last sheet of all authenticated copies of records, mentioning the number of the sheets, and such note is to be attested. (Sudr Pro., 20th February 1850.)

* Now Section 27, Act XXIII of 1861.

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41. Whenever a correction is made in any record or authenticated copy of a record, such correction is to be verified. (Sudr Pro., 20th February 1850.)

42. In all cases in which pleaders are retained, authenticated copies of orders passed may be delivered to them, on their application, instead of to their clients.

43. Where a party is unable to obtain a copy of some record in another office essential to his case, the court should, on the motion of such party, furnish him with an order stating such record to be requisite, and failing this means, should summon the proper officer to produce such record under the provisions of Section 138 of the Code. (Sudr Pro., 7th March 1842.)

COSTS.

1. The sums paid on account of printing charges are to be included in the costs in all suits and petitions determined in the High Court.

2. Every party to a suit may retain one or more pleaders, and several parties on the same side may retain one or more pleaders in common, but the losing party will under no circumstances be charged with the fees of more than one pleader for each party on the other side. (Sudr Pro., 8th April 1830.)

3. Where parties on the same side retain each a separate pleader, the other party, if he loses, will be charged with the fees of each of such pleaders, if the interests of the parties retaining them were distinct, and with the fees of one only if their interests were identical. (Sudr Pro., 8th April 1830.)

4. Pleader's fees are to be calculated upon the same sum upon which the stamp used for the memorandum of appeal was calculated. (Sudr Pro., 5th November 1829.)

5. If a suit be remanded, the pleader's fees are to be calculated at one-fourth of fees in a regular suit decided on the merits. (Sudr Pro., 3rd March 1860.)

6. If a suit be privately adjusted, the pleader's fees are to be apportioned in accordance with the agreement of the parties, if any, otherwise they are to be calculated in the same manner as in suits remanded. (Sudr Pro., 3rd March 1860.)

7. Where each party is adjudged to bear his own costs, no statement of costs need be appended to the decree.

8. Where any suit is remanded, a statement of the costs incurred in the appellate court is to be appended to its order, that the same may be charged to the losing party in the revised decree of the lower court.

9. To assess the defendant in a suit with the plaintiff's costs when plaintiff's suit is dismissed for want of any cause of action, is irregular and unreasonable. (III, H. C. Rep., 113.)

10. A suit cannot be maintained for costs incurred by the plaintiff in resisting a claim made by the defendant under Section 246 of the Code, when no order has been made as to costs. It is only when costs are made a part of the order and then by execution under it, that a party can enforce the payment of costs. (III, H. C. Rep. 341.)

11. If the court sends for public records, &c., whether of its own accord or upon application of parties, the cost of postage, &c. will be included in the amount of costs in the decree (H. C. Pro. No. 361 of 29th Feby. 1872.)

12. An action lies for the recovery of costs incurred in a suit to

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compel registration. Where costs adjudicable then only separate suit for cost cannot lie. (VI, H. C. Rep. 192.)

13. The court has no power under sections 97 and 187, Act VIII of 1859, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so, with liberty to bring another suit for the same matter. In this case the plaintiff withdrew the suit before it was called on for trial (I, H. C. Rep. 247.)

14. As a general rule, the Plaintiff in a properly instituted interpleader suit is entitled to his costs (I, Ibid, 360.)

CUSTOM.

When custom can or cannot be recognized. (See I; H. C. Rep. 420; II, Ibid, 1, 17; III, Ibid, 50; and VI, Ibid 40.)

CRIMINAL PROSECUTION.

1. Application for sanction to institute a criminal prosecution on a charge of perjury, should, as a general rule, be first made to the court before which the perjury is alleged to have been committed. (VI, H. C. Rep. 92; 17 Cal. W. R. Cr. 46.)

2. The District Civil Court has no power to sanction a prosecution for an offence committed before the Court of Small Causes, as that court is not subordinate to the civil court (VI, H. C. Rep. 19 & 18.)

☞ Sections 169 and 170 of Criminal Procedure Act XXV of 1861; and S. 468, 469, 470, and 471 of the new Criminal Procedure Act X of 1872.

3. Government sanction is required for the prosecution of any district moonsiff or judge if a complaint is made against him as judge. (VI, H. C. Rep. App. XXII.) But the power of sanctioning or directing prosecution, vests in the court or authority to whom the judge or other public servant not removable, &c. is subordinate. Every court or authority has the power of sanctioning prosecution of its subordinate judge or servant unless that power is limited or reserved by Government (VII, H. C. Rep. 58.)

☞ S. 167, Act XXV. of 1861, and S. 466, Act X of 1872.

DECREES.

1. The judgments and decrees of the Courts are distinct documents. (Sudr Pro., 3rd December 1860.)

2. Decrees are to be drawn up as nearly as may be upon the model of those sent by the High Court to the lower courts from time to time. (H. C. Pro., 30th July 1866.)

3. The decree is to state the matters required by Section 189 or 368, without adverting to any of the reasons or considerations detailed in the judgment, and is to contain a full statement of costs.

4. No separate entry is to be made of the date on which the decree may be sealed and signed: the only date appearing in the decree is to be that on which judgment was pronounced, which ordinarily will be the day on which the suit is finally heard. (Sudr Pro., 3rd December 1860.)

5. Every decree should be drawn up within five days from the date of pronouncing judgment, and the fair copy and translation of the judgment required for record in court should also be completed within the same time. (Sudr Pro., 6th September 1860.)

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6. If decrees are left unsigned by a judge who has died or quitted the station after pronouncing judgment in open court and preparing written judgments, such decrees may be signed for him by his successor. (Sudr Letter, 5th October 1835.)

7. Form of decrees for foreclosure of a mortgage. (I, H. C. Rep., 460.)

☞ In the judgment of Privy Council of the 20th January 1871, on the appeal of Pattabhiramier v. Venkata Row Naiken, from the decree of the late Sudr Court at Madras; where A mortgaged his land to B by a conditional deed of sale, in which it was arranged that the sale should become absolute if the mortgage were not redeemed within the time specified: *Held*, that these conditional sales were very frequent in India; that the property was really intended to be transferred in event of the mortgagor not being able to redeem at the proper time; that there was no regulation *nor any course of decisions* contrary to this interpretation of the deed of sale; that Bengal Regulations are not in force in Madras Presidency; and that the equity of redemption, as understood in English law, was unknown in India. (VI, Madras Jurist, 1871, p. 141.—P. T.) But subsequently the High Court (in a case between the Zemindars of Bobbili and Madugula, R. A. No. 48 of 1871, decided on 11th December 1871) having considered the judgment of P. Council above alluded to said that the decisions of the late *Sudr Court* have carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of transaction, no sale can become absolute; and that the High Court have followed the English rule, and have held the question one of construction, admitting however, for the purpose of construction, other documents and oral evidence. (VII, H. C. Rep., 6. P. T.)

8. A creditor suing under a contract of hypothecation must prove that there was an actual pledge, and that the land was part of the debtor's estate at the time of pledge. The decree will then be for sale of the property hypothecated unless the debtor pay the amount due with interest within a period to be named by the court. (II, H.C. Rep., 51.)

9. The ascertainment of the amount of damages is a necessary preliminary to a decree under Section 192 of the Code for the specific performance of a contract and payment of damages as an alternative in case of non-performance.

The application of the doctrine of specific performance to partnerships is governed by the same rules as those which govern it in other cases.

There are only two classes of cases in which specific performance of agreement to enter into a partnership has been decreed; first, where the parties have agreed to execute some formal instrument which would confer rights that would not exist unless it was executed; secondly, where there has been an agreement, which has come to an end, to carry on a joint adventure, and the decree, that the agreement is valid, prefaced by the declaration that the contract ought to be specially performed, is made merely as the foundation of a decree for an account. (I, H. C. Rep., 341.)

10. In decreeing specific performance, the court has always to consider whether it can enforce the whole of the agreement, and where it cannot do so, this relief will be refused. (I, H. C. Rep., 347.)

11. Although under the Code the courts are bound to take into consideration all the rights of the parties to the suit, whether legal or equitable, and by its decree to give effect to those rights as far as possible, the court should confine itself to granting such relief as is prayed in the plaint. (I, H. C. Rep., 471.)

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DIARY.

1. Diaries should be kept in all civil suits and miscellaneous proceedings in original and appellate jurisdiction.

2. Form A is the general diary in which the daily proceedings are to be entered consecutively without reference to the case to which they may relate. It is not necessary to set out the purport or contents of any record or proceedings, except so far as may be necessary for the purpose of description and reference. This diary must be kept in the language of the district, and the cheristadar or head ministerial officer of each court will be responsible for the correctness of the entries therein made.

3. Form B is the separate diary connected with each suit or proceeding, in which every step taken in that suit or proceeding is to be minuted consecutively. As soon as a suit or petition (original or appeal), is brought on file, a separate page should be commenced, and when that page is filled, the diary of that suit or petition should be continued in the first blank page, reference to the number of the second page being made at the foot of the first page, and the number of the first at the head of the second page, and so on. The entries in this form will be simply copies of the entries in Form A, but whenever possible, this diary should be kept in the English language.

4. In every case in which the record of a suit or miscellaneous proceeding is sent for by a superior court, a complete transcript from Form B must accompany the record. (H. C. Pro., 794 of 26th April 1870.)

5. Form B to be kept in the English language in the civil courts and the Principal Sudr Ameens' Courts. (H.C. Letter, No. 1038 of 18th June 1871.)

☞ The following are the forms of A and B diaries.

A.

Year and Date.	Entry.
1870 March 17.	Plaint presented Returned on same date for amendment.
	Original Suit No. 99 of 1870 first hearing held. Plaintiff and Defendant appear. Defendant gives in a written Statement. Issues settled, and 25th March fixed for final disposal.
	presents a petition praying for a certificate under Act XXVII of 1860. It is numbered 3 of 1870. Notice ordered to heir of deceased with term of days.
	presents application for execution of Original suit No. 103 of 1868. It is numbered 207 of 1870. Notice to Defendant to appear on 10th April and show cause why decree should not be executed.
	Original Suit No. 21 of 1870, adjourned on 4th March to this date, called on for final disposal. Defendant present, Plaintiff not present. Judgment against Plaintiff by default.
	presents a claim to the property attached in execution of decree in Original Suit No. 7 of 1865. Posted for hearing on 25th. Notice to issue to decree holder and Defendant.

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Year and Date.	Entry.
1870, March 18.	Original Suit No. 19 of 1869 adjourned from 10th March to this date. Judgment pronounced dismissing the suit with costs. Original Suit No. 21 of 1869, adjourned from 10th March to this date; called on for final disposal. Depositions given by and witnesses for Plaintiffs. The following document admitted for Plaintiff by leave of the Court. Authenticated copy of decision of Collector passed in a proceeding under Act VIII of 1865, on 1st Dec. 1868. The following witnesses were examined for Defendant (giving names.) The deposition of taken under commission issued on 1st July 1869, is read in evidence for Defendant. Judgment is pronounced for Plaintiff for the amount of his claim with costs.

B.

Year and Date.	Original Suit No. 2 of 1869.
1869, March 10th	Plaint filed and registered with documents, viz. :— 1 stamped mortgage bond dated 11th June 1852. 1 stamped cadjan deed of division, dated 10th May 1853. 1 Puttah, dated 7th May 1829. Summons to Defendant to appear on 26th March for settlement of issues.
26th	Plaintiff and Defendant present. Defendant gives in a written statement. Issues settled. Adjourned for final disposal to 10th April.
„ April 1st.	Application by Plaintiff and Defendant for summonses to issue to the following witnesses. Order for summonses.
10th	Case called on for final disposal; both parties present. Plaintiff's witnesses, and are examined, and documents read in evidence and marked as follows: Mortgage bond of 11th June 1852. A Puttah, 7th May 1829. B Deed of division, dated 10th May 1853. C (*Continued at page* 45.)

(*B Continued, Page* 12.)

Year and Date.	Original Suit No. 4 of 1869.
	(*Continued from page* 4.)
1869, March 12th	Adjourned to this date for final disposal from 1st March. Plaintiff appears. Defendant does not appear.
13th	The case is proceeded with *ex parte*. Plaintiff's witnesses, and are examined. Judgment passed for Plaintiff with costs.

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Year and Date.	Original Suit No. 4 of 1860.
25th	Defendant appears and applies for an order to set aside the judgment passed against him. Notice to Plaintiff. Application posted for hearing on 25th March. Plaintiff and Defendant appear. Defendant shows cause. Judgment ordered to be set aside, and 2nd April appointed for proceeding with the suit. Defendant applies for summonses to his witnesses. Order for summonses. Summons issued.
April 2nd	Plaintiff and Defendant present. The following witnesses for Plaintiff and Defendant examined (*Continued at page* 46.)

DISTRICT MUNSIFS.

1. In nominating a person for the office of district munsif, the civil judge is to specify in a tabular form, the name, age, religion and past services of such person; and in the event of his not having passed the required examination, the grounds upon which he is recommended in preference to any passed candidate in the district. (Sudr Pro., 4th November 1844.)

2. In nominating persons for the office of district munsifs, preference is to be given to the claims of candidates who have passed the prescribed examination if they are otherwise qualified for the office. (Sudr Pro., 12th March 1860.)

3. The High Court is authorized to make from time to time such interchanges among the district munsifs as they deem called for, but no native judicial officer will be transferred to a district with the language of which he is not fully conversant. (Sudr Pro., 20th October 1852.)

4. Civil judges are to bring to the notice of the High Court the case of any district munsif who, from age or other cause, may be disqualified for the active and efficient performance of his duties. (Sudr Pro., 17th June 1851.)

5. The judges of the High Court will not interfere in the matter of any complaint against a district munsif, unless the case be expressly reported by the civil judge for their orders. (Sudr Pro., 21st April 1860.)

6. In the event of any district munsiff's file being unusually low, the civil judge is to make enquiry for the purpose of ascertaining whether the circumstance arises from the unhealthiness of the station, the munsiff's incompetency, or any other ascertainable cause susceptible of a remedy. (Sudr Pro., 20th September 1824.)

7. District munsifs are required to pass not less than 20 decrees on the merits during each month, exclusive of decrees in small causes. (H. C. Pro., 2nd March 1864.)

8. The disposal by district munsifs of suits to which their relations are parties is very objectionable. All such suits (except small causes) must be referred by district munsifs for the orders of the civil court. (H. C. Pro., 30th April 1867.)

Proceedings of the High Court of Judicature at Madras, 11th January 1871, No. 61.

9. The civil judge of Mangalore has lately inspected several of the district munsif's courts in his Zillah, and has brought to notice many

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irregularities in the method of keeping accounts and in filling up the prescribed forms, &c.

It occurs to the High Court that similar irregularities probably exist unnoticed in other zillahs, and that it may be useful to circulate to all judges for their information the heads of enquiry adopted by the civil judge of Mangalore. When opportunity occurs, the civil judges should visit the courts subordinate to them, and satisfy themselves as to regularity of procedure, account-keeping, &c.

HEADS OF ENQUIRY.

1.—Whether the Cash and Ledger Books and Accounts relating to fines are regularly kept.

2.—Whether the Accounts relating to permanent advances are kept, and whether salary receipts are stamped.

3.—Whether Account of Batta collections are regularly kept.

4.—Whether Accounts of Registration Fees are kept. (Not kept now.)

5.—Whether Plaints are received on single stamps of full value, and whether stamp-centres are punched out.

6.—Whether Accounts of Court Fee Stamps are kept.

7.—Whether the Diaries A and B are regularly kept.

8.—Whether the Munsif takes notes of evidence.

9.—Whether Registers of Suits are regularly kept.

10.—Whether a Register of Miscellaneous Petitions and Register of Applications for copies are kept.

11.—Whether the copies of Periodical Returns are kept.

12.—Whether Stationery Accounts are kept.

13.—Whether Regulations, Acts, &c., are well preserved.

14.—Whether Accounts of Postage Stamps received for Batta are kept.

15.—Whether a Nomination Roll of Batta Amins and Peons is kept. Processes regularly distributed amongst them, and the batta collections sufficient for paying them all.

16.—How receipts for payment of money to suitors are kept.

17.—Whether Decrees in Small Causes are written by Munsifs in their own hand.

18.—Whether Munsifs themselves record orders on Petitions.

19.—What copies are furnished on plain paper.

10. The sanction of Government is required for the prosecution of any munsif or judge if a complaint is made against him as judge under Sec. 167 of the Code of Criminal Procedure. (VI, H. C. Rep., App. XXII; H. C. Pro., 29th March 1871.) See "Criminal Prosecution."

11. District munsifs are eligible to casual leave of absence in cases of sickness, death of near relative, &c. (G. O., 9th December 1869, No. 2016, Judicial.)

12. District munsifs ought not to be called on to depose as to what took place before him in the course of a trial, and he is entitled to exemption. (H. C. Pro., 27th November 1871; VI, H.C. Rep. App. 42.) But a magistrate is not exempted. (H. C. Pro. 15th March 1872, No. 515.)

13. Whenever any principal sudr ameen or district munsif is recommended by the zillah judge to be permitted to remain in the service after attaining the age of *fifty-five years*, the recommendation shall invariably be submitted to Government through the honorable

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the judges of the High Court, in view to the opinion of the judges being recorded on the same. (Mad. Government Order, No. 248 of 28th February 1872.)

EXECUTION OF DECREES.

1. Where two plaintiffs sue for separate shares of the same property, and obtain a decree accordingly, each may, under Section 207 of the Code, apply separately for execution of decree in respect of his own share.

2. If a decree-holder die, the decree is transferred by operation of law to his legal representative; but it cannot be executed in favour of such representative, until he has obtained a certificate from the District Court under Act XXVII. of 1860. (Suder Pro., 17th May 1861.)

An authenticated copy of a decree should be produced with the application. (H. C. Prp., 15th September 1862.)

3. No application for execution of a decree by attachment of any estate paying revenue to Government can be received, unless it be accompanied by an authenticated extract from the revenue register.

4. It is an authenticated extract of the register, *as it exists*, which is alone required under Section 213 of the Code, and it is not competent to the revenue authorities to refuse to grant the same, notwithstanding that such register may not indicate the present owner of the land. (Sudr Pro., 15th October 1860.)

5. If the person against whom it is sought to execute the decree plead that he never was defendant in the suit, the court must enquire into the plea, after notice to the decree-holder, and pass such order as may appear just and proper. If the plea be substantiated, the judgment cannot be enforced against him. (Sudr Pro., 17th August 1860.)

6. Judgment-debtors are at liberty to pay into court, at any time, either before or after execution is applied for, the sums decreed against them.

7. Movable property found in the defendant's possession and attached by actual seizure under Section 233 of the Code, cannot be left in the charge of a surety. But where such property may be at a distance from the court, and of a description difficult to remove, the amin deputed to attach it may keep the same in his custody upon the spot, and on the receipt of his report, the court may at once proceed under Section 242 to order the sale of the property so attached. (Sudr Pro., 19th March 1860.)

8. The boundaries, where specified in the decree, and not the exact quantity by subsequent measurement, indicate the identity of the lands of which possession is to be given to the decree-holder.

9. If it be found on proceeding to enforce a decree that no such land exists as that described in the plaint, the parties must be referred to a fresh suit. (Sudr Pro., 25th January 1848.)

10. Until the Government vests collectors generally, or any collector particularly, with the power of selling revenue paying land in execution of decrees, the courts are under Section 248 of the Code to effect such sales by means of their own officers. (Sudr Pro., 1st October 1860.)

11. Upon application for an order of sale in execution of a decree, an order and proclamation should be issued without delay, if a reasonable time has elapsed since the attachment of the property, provided that no adverse claim or objection has been made, or if made, that it has been rejected.

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12. When a day has once been fixed for the sale, and the proclamation has issued, it must not be departed from except under very special circumstances, which must invariably be recorded. In case of a postponement being unavoidable, the earliest possible notice must be published in the same way and at the same places as the original proclamation, and a new day for the sale must be fixed and notified with the least practicable delay. In all cases without exception, the sale of any lot once begun must be concluded on the same day.

13. The confirmation of every sale should be entered as of course after thirty days, unless some application to set aside the sale be still pending, in which case the sale should be confirmed immediately after the objection is disallowed. (H. C. Pro., 8th January 1869.)

☞ The sale can only be set aside for such irregularities as is specified in S. 256 Act VIII of 1859, and not otherwise. To order a resale it is no ground that the property had been sold at an under value. (VI, H. C. Rep., 360.)

14. The nazir cannot be allowed any commission upon property sold by order of court. (Sudr Pro., 29th February 1836.)

15. Money realized by the sale of property is not to remain in the nazir's custody, but to be remitted to the revenue treasury if for any reason it cannot be at once paid over to the party entitled thereto. (Sudr Pro., 8th February 1845.)

16. A purchaser at a public sale of land in execution of a decree acquires no rights, but those possessed at the time of the sale by the judgment-debtor. (II, Sudr Sel. Dec., p. 74.)

17. If the decree-holder be declared to be the purchaser at a sale in execution of a decree, the sum which he is entitled to recover may be looked upon in the light of the prescribed deposit and purchase-money so far as it is sufficient for the purpose.

18. If a debtor be imprisoned on account of several decrees obtained against him by the same creditor, subsistence money need not be deposited in each case.

19. Where several plaintiffs may apply for the imprisonment of a judgment-debtor, each plaintiff must provide the regulated monthly allowance for the debtor's subsistence. (Sudr Pro., 24th March 1812.)

20. The application of a party for his discharge under Section 280 of the Code, should be prepared to the address of the court under whose orders the person may be in confinement in execution of the decree, and should be received and forwarded if necessary to such court, post free, by the officer in charge of the jail. (Sudr Pro., 25th February 1860.)

21. The discretionary power of a judge to detain a defendant in custody, otherwise than by committing him to prison in execution of a decree, is confined to the case provided for in Act XXIII of 1861, Section 8. (I, H. C. Rep., 441.)

22. The discharge of a defendant from confinement in jail in consequence of the plaintiff's failure to pay subsistence money at the rate fixed by the court, bars a second arrest and imprisonment in execution of the decree. (IV, H. C. Rep., 76.)

23. A civil judge has no power to execute or take any steps towards the execution of any decree, which under the provisions of Section 362 of the Code, ought to be executed by a district munsif or other subordinate judicial officer, notwithstanding that such officer may be absent and the property decreed may be in course of alienation. (Sudr Pro., 1st March 1861.)

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24. The civil court has no jurisdiction under Section 29 of Reg. IV of 1816 to make an order for the execution of a decree in a suit tried before a village munsif. (IV, H. C. Rep., 188.)

25. Execution cannot be obtained on a merely declaratory decree. (I, H. C. Rep., 184.)

26. Execution cannot be issued upon a razinama, unless the terms of it are embodied in a decree of the court. (II, H. C. Rep., 305.)

27. Where a bond was registered under Sections 51 and 52 of Act XVI of 1864, and by its terms a fixed amount of interest was to be paid at the end of every month: *Held*, that by virtue of the special registration, the obligee was entitled to move for execution in respect of each instalment of interest due. (III, H. C. Rep., 88.)

28. Arrears of maintenance can be recovered by process of execution in a suit in which a decree is passed providing for the payment of future maintenance. Where arrears of maintenance can be recovered by such process of execution, they cannot be made the subject of a fresh suit. (IV, H. C. Rep., 183.)

29. Process of execution against the person or personal property of a judgment-debtor may be issued on the decree of a Court of Small Causes by a court in another district. Before issuing such process of execution, the court receiving the decree is bound to see that the provisions in Sections 286 and 287 of the Civil Procedure Code have been strictly complied with.

The documents required to be transmitted for the purpose of obtaining execution are a copy of the decree and a certificate of any sum remaining due under it, together with a copy of any order for execution that may have been passed.

Act XXVI of 1867 (now Act VII of 1870) requires that copies of the decree and of the order for execution should be stamped. The certificate requires no stamp. (IV, H. C. Rep., 331.)

30. No suit is maintainable to enforce a liability specifically by the decree of a civil court in the mofussil, the right of suit in such case being taken away by Section 11, Act XXIII. of 1861. (IV, H. C. Rep., 453; V, Ibid, 185 and 375.)

31. Mofussil Courts of Small Causes can (in the execution of decrees under Act XI of 1865) follow the procedure laid down in Section 8, Act XXIII. of 1861, if the judgment-debtor put in an application under Section 273, Act VIII of 1859 (for his discharge, on the ground that he has no property, except the immovable property which he is willing to place at the disposal of the court.) (V, H. C. Rep., 108.)

32. Section 270, Act VIII of 1859, gives priority to the decree-holder who first causes the property of the judgment-debtor to be attached: and *not* to the decree-holder who first applies for attachment. (V, H. C. Rep., 113.) A a, judgment creditor of the defendant, attached his property, but took no further step. B, another judgment creditor, subsequently attached and sold the property. *Held*, that A has his prior right to payment. (VI, Ibid 348.)

33. Execution of a decree in case where an appeal is made to the Privy Council cannot be stayed. (V, H. C. Rep., 98.)

34. If a notice, under Section 216, Act VIII of 1859, was served by affixing a copy of it on the wall of the house in which the defendant (who was absent from the village) was then residing, is sufficient; and the defendant, not having appeared upon the notice, will not be allowed to object the reception and proceedings of a subsequent application. (V, H. C. Rep., 100.)

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* Now Sec, 52 Act XX. of 1866.

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35. A temporary stay of the warrant of execution does not prejudice the right of execution again. (V, H. C. Rep., 285.)

36. *Vomia* (pension) is not subject to attachment. (V, H. C. Rep. 371.)

37. The person executing the process directing a general attachment of movable property, having gained access to a house, has a right to remove the lock from the door of a room in which he has reasonable ground for believing movable property to be lodged. (V, H. C. Rep., 169.)

38. The Mofussil Court of Small Causes can sell the undivided right, title and interest of a deceased debtor, (to which the defendants succeeded) in the immovable property, in satisfaction of a decree obtained against the defendants without infringing the second proviso of Section 6, Act XI of 1865. Until decree-holder has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immovable property under Section 20 of the said Act. (V, H. C. Rep., 275.)

39. It is not competent to the court executing the decree, to grant further produce of the land to the date of execution. (VI, H. C. Rep., 15.)

40. Section 89, Act VIII of 1859 renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. (VI, Ibid, 135.)

41. Small Cause Courts cannot attach standing crops, which are immovable property. (Ref. Case, 13 of 1871.)

42. Arrest under civil process of a mofussil court on Sunday is legal in this country. (H. C. Pro. 30th July 1869; IV, H. C. Rep. App. lxii.)

EXHIBITS.

1. Exhibits received and admitted in evidence are to be marked with the letters of the alphabet if put in by the plaintiff, and with numerals if put in by the defendant. (Sudr Pro., 8th December 1860.)

2. Capital letters (A. B, &c.) are to be used to mark the plaintiff's exhibits, and when the letters of the alphabet are exhausted, double capitals (AA, BB, &c.) (Sudr Pro. 8th December 1860.)

3. If at a later period, *e. g.*, in appeal or on remand, futher exhibits put in by the parties are admitted in evidence, they are to be marked with letters or numbers consecutive to the letter or number on the last exhibit previously filed. (Sudr Pro. 8th December 1860.)

4. If there be several plaintiffs or defendants, and each puts in separate exhibits, they are not to be lettered or numbered separately, but continuously as if put in by a single plaintiff or defendant. (Sudr Pro., 8th December 1860.)

5. No exhibit, deposition or other document, is on any account to be referred to by its number on the record, but only according to its distinctive mark, *e. g.*, "Plaintiff's Exhibit A," "Deposition of the 1st witness for the defence," &c. (Sudr Pro., 8th December 1860.)

6. An English translation of any pleading or exhibit tendered by a party may be received, but its accuracy must be ascertained before it can be acted upon. (Sudr Pro., 18th November 1844.)

7. The duty of endorsing on exhibits the date of filing may be entrusted to the chief ministerial officer of the court, and the endorsement will be sufficiently attested by the judge's initials or signature. (H. C. Pro., 19th June 1866.)

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8. If any party or pleader wish to inspect an original exhibit, with a view to ascertain its probable age, or to discover erasures or interpolations therein, he must do so in open court at the hearing of the suit. (Sudr Pro., 5th September 1859.)

9. Certified copies of exhibits are to be retained only in cases where the originals are returned under Section 136 of the Code while the suit is still pending, and are not required where the originals are returned under Section 135 after the termination of the suit.

10. A receipt book is to be kept in every court for all exhibits returned to parties, showing the number of the suit, the name and position of the party who produced the exhibit, the date of its being returned, and the party's signature. (Sudr Pro., 24th December 1861.)

FORM OF COMMUNICATION.

1. Civil courts shou'd use the form of proceedings in their communications with subordinate courts. Collectors should not address orders to district munsifs. (H. C. Pro., 4th December 1867.)

FRAUD.

1. A defendant may plead the joint *fraud* of himself and plaintiff, as a bar to an action upon a contract which plaintiff seeks to enforce by suit. (II, H. C. Rep., 249) See Sections 17, 23, &c. Act IX of 1872.

GOVERNMENT PLEADER.

1. Whenever the office of Government pleader may become vacant, the civil judge is, after communicating with the collector, to select a successor, and make his recommendation direct to the Government, enclosing the collector's opinion if adverse to the selection made. (Sudr Pro., 8th June 1836.)

HOLIDAYS.

1. No holidays are to be granted to court servants except such as are authorized by Government, and any ministerial servant absenting himself from his duties on any day not included in the Government list of holidays, will be liable to forfeiture of his salary, and also to fine or dismissal unless he obtain special leave on personal grounds. (Sudr Pro, 21st December 1858.)

2. Where any day specified in the Government list of holidays may not be observed in a district, leave may, in the discretion of the judge, be granted on some other day, provided the total number of holidays allowed in the year be not exceeded. (Sudr Pro., 11th February 1859.)

HOURS OF BUSINESS.

1. The hours fixed for conducting the business of the courts are from ten in the forenoon till sunset. (Sudr Pro., 11th June 1859.)

INTEREST.

1. In the absence of a demand in writing, interest up to the date of the suit cannot be awarded upon sums not payable under a written instrument of which the payment has been illegally delayed. (I, H. C. Rep., 369.)

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2. The obligor having offered to pay the principal and interest into court: *Held*, that he should be relieved from interest from the date of such offer. (I, H. C. Rep., 124.)

3. The provision in Section 4 of Regulation XXXIV of 1802, against an award of interest in excess of the principal, refers only to the amount claimed for interest at the time the suit is brought. (I, H. C. Rep., 5.)

4. Where a decree does not provide for the payment of interest, it is not competent to the court executing the decree to add to it by giving interest. (III, H. C. Rep., 421.)

5. When the court orders further interest under Act XXIII of 1861, Section 10, it is to be from the date of the decree to the date of payment of the principal sum adjudged, and not for a limited period. (I, H. C. Rep., 211.)

6. Under the summary procedure of the Bills of Exchange Act V of 1866, the plaintiff is entitled to claim whatever sum, principal and interest, is demandable on the legal constitution of the instrument (VI, H. C. Rep., 257.)

7. A claim for an amount of interest exceeding the principal sum due is maintainable. Hindu law is not binding upon such matters in the mofussil. (VI, H. C. Rep., 400.)

ISSUES.

1. At the first hearing of a suit, if the provisions of Sections 120, 125, 128 and 139 of the Code are properly attended to, the court will have before it the parties or their pleaders or recognized agents, any written statements which may have been put in, and all the documentary evidence adduced in the case.

2. The course to be pursued is to examine the parties (or their pleaders or recognized agents) orally, for the purpose of ascertaining upon what questions of law or fact the parties are at issue, in order that the evidence to be afterwards adduced may be confined to such questions alone, and that the time of the court may not be wasted in hearing evidence upon matters which are not disputed.

3. The court should commence by reading out the allegations of the plaintiff, as appearing upon the face of his plaint, and written statement if any, and should then enquire of the defendant how far he admits or denies the truth of the plaintiff's averments. The same course should afterwards be pursued with respect to the pleas of the defendant, the plaintiff being called upon to state how far he admits or denies the truth of any of the facts pleaded by the defendant.

4. The result of this examination will necessarily be, that certain matters will have been affirmed on the one side, and denied on the other, showing the real questions on which the parties are at issue. (See Sec. 3, Act I. of 1872.)

5. Upon the disputed points thus elicited, the court is to frame the issues, by which is meant that the court is to set out in clear and concise terms, for the guidance of the parties in the production of their evidence, the real matters upon which the judgment of the court is required.

6. Thus, in a suit to recover money due under a bond, if the instrument be admitted, and it be merely pleaded that the bond has been discharged, no evidence will be required to prove the execution of the bond, and the only question on which an issue will be necessary, will be the question whether or not the bond has been discharged.

7. And in a suit by a Hindu to obtain a share of ancestral property, if it be merely contended that the property is the self acquisition of

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the defendant, and the fact of the family being undivided, as well as the relationship of the plaintiff be not disputed, no evidence will be required to prove the plaintiff's right to the share he claims, and the only question on which an issue will be necessary will be, whether the property is ancestral, or the self-acquired property of the defendant.

8. It will not be necessary to specify the parties by whom the matters set out in the issues are to be proved or disproved. If the oral and written statements be duly considered, and the issues carefully framed, the parties cannot fail to discover the evidence which it is material for them respectively to adduce upon each issue.

9. No depositions are to be taken at the time of settling the issues, but, under Section 125 of the Code, the substance of the oral examination conducted by the court is to be reduced to writing. This should be done by the judge with his own hand, and duly entered on the record.

10. The order of the court at the time of settling the issues should be in the hand-writing of the judge as soon as the oral examination of the parties is concluded, and it is to be considered a material paper in the suit, to be transmitted to the appellate court in the event of an appeal being preferred from the decree of the court of first instance. (H. C Pro., 13th March 1863.)

11. When the issues are being framed, the documents filed with the plaint should be admitted or denied. In the order of the court, the fact of such admission or denial should invariably be recorded. (Judgment in R. A. 33 of 1866.)

12. When an issue has been referred by an appellate court for trial, a notice will be affixed in the court house on receipt of the lower court's finding thereon, and any memorandum of objections against such finding must be put in within fifteen days from the date of such notice.

☞ See Act I. of 1872.

JUDGMENT.

1. The judgment is to be divided into paragraphs, and the paragraphs numbered. (Sudr Pro., 29th April 1850.)

2. The name of the presiding judge, European or native, is to be entered at the head of every judgment and decree immediately under the designation of the court. Thus:

Suit No.——— of ———
In the Court of the District Munsif of ———————

Present:—*(name of presiding judge.)*

3. At the beginning of every judgment in original Suits, an abstract of the pleadings is to be given, and after that, a descriptive list of all the exhibits filed and the names of the witnesses examined, followed by a clear statement of the nature of the case on both sides, a declaration of the matters proved, and the court's decision.

☞ Abstract of Pleadings, the list of exhibits, and the names of witnesses may be omitted. (H. C. Pro., 19th Sep. 1862.)

4. In appeals, the judgment will embrace the pleadings in the court of first instance, the decree of that court, the objections taken in the memorandum of appeal, the question for determination, the facts established in evidence, and the court's decision, detailed reasons being always given where the appellate court may differ from the view of the evidence taken by the court of first instance. (Sudr Pro., 30th Nov. 1861.)

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5. The parties in appeal are not to be referred to in the judgment as appellants or respondents, but as plaintiffs or defendants. (Sudr Pro, 5th December 1860.)

6. Where cross-appeals are preferred from the same decree, one judgment is to be given upon both appeals, embracing the several matters put in issue in each of the appeals respectively. (Sudr Pro., 18th January 1858.)

7. Where two suits are connected, the parties being the same in each, and the judgment in one governs the rest, it will be merely necessary in the second and following suits to refer briefly to the reasons detailed in the judgment pronounced in the first.

8. Revised judgments in cases remanded are to be complete in themselves, and not to require reference to the first judgment to elucidate their meaning. (Sudr Pro., 2nd February 1853.)

9. If after a judge has left the court, it be found that in any suit brought to a final hearing, no written judgment has been placed on record by him, his successor must hear and decide the suit, notwithstanding that such judge may have pronounced judgment in the case and made a brief note of his decision. (Sudr Pro., 11th June 1861.)

10. Judgments written by a civil judge but not pronounced in open court cannot, in the event of his removal before pronouncing the same, be published by his successor, but the cases must be re-investigated. (Sudr Pro., 7th August 1849.)

11. There is no objection to a judge at the close of the hearing of a suit or appeal stating at once orally the judgment which he intends to record and deliver. Such a practice is commendable. Section 185, Act VIII of 1859, requires him afterwards to pronounce in open court his written judgment. (H. C. Pro, No. 2271 of the 18th November 1869; V, H. C. Rep., App. 8.)

12. Although it is not so necessary to enter fully the reasons for confirming, as it is for reversing or modifying the decree of the lower court, still the High Court must require appellate judges in every case to act so far in conformity with the provisions of Section 359 of the Code of Civil Procedure as is sufficient to show that the court has dealt with each ground of appeal, and more especially to record distinct findings on questions of *fact*, as the conclusions of the lower appellate courts are final in this respect, and binding on the High Court in special appeal. (H. C. Pro., 22nd July 1869.)

JUDICAL OFFICERS AND PUBLIC SERVANTS.

1. Appeals by judical officers complaining of wrongful dismissal or other unjust treatment, must be submitted to the High Court through the civil judge, who will forward the same without delay, together with his observations thereon. If the party appealing desires to be heard either personally or by his advocate or vakeel, he must make the request in the statement of his complaint, and set forth the special grounds on which he desires a hearing in open court. If the court should think fit to comply with such request, a day will be fixed for the hearing, and notice thereof given to him, and to the civil judge, whose decision is appealed from; otherwise an order will be passed without any such hearing. (H. C. Pro., 20th November 1866.)

2. Whenever the removal of a judicial or magisterial officer is recommended, a formal enquiry should be held in the presence of the accused, and the evidence, oral and documentary, recorded and submitted to the High Court with the defence. (H. C. Pro., 20th November 1866.)

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3. The following rules relate to the subject of uncovenanted judicial servants holding or acquiring landed property.

(*a.*) No uncovenanted judicial servant shall in future be debarred from holding or acquiring lands within the Madras presidency upon the conditions hereinafter specified.

(*b.*) No Principal Sudr Amin shall be allowed to hold or acquire by purchase, bargain, mortgage, transfer, or by any means directly or indirectly, any landed property, or interest in any landed property within the zillah in which he may be employed; but he shall not be debarred from holding or acquiring such landed interests out of the limits of the zillah, provided he submit a statement of his landed property for registry by the civil judge as hereinafter provided.

(*c.*) In like manner no district moonsif shall be permitted to hold or acquire lands within the limits of the district over which he presides.

(*d.*) The previous consent of the civil judge is not necessary to enable a judicial officer or servant to purchase or acquire landed property where it may be admissible for him to do so under these rules; but every uncovenanted judicial servant shall, on or before the 15th January of each year, give in for registry to the civil judge (or if employed in a court of small causes to the judge of that court) a full and exact return of all land purchased or acquired by him during the *preceding* year, whether within or without the district in which he is employed, and not already registered in his name, *with a declaration at foot duly signed by him to the effect that, taken together with the land previously registered, it truly represents all the landed property possessed by him, or in which he is in any way interested, in the District in which he is serving or elsewhere.*

(*e.*) Where uncovenanted judicial servants shall become possessed of land, or interest in land, by individual inheritance, or as members of a family, they shall immediately upon such property devolving upon them, communicate all particulars respecting it to the civil judge (or in the case of a servant in a Small Cause Court, to the judge of that court) for registry, *with a declaration as to their truthfulness.*

(*f.*) When individuals holding land or having any interest in land may be appointed to the office of principal sudr amin or munsif, or any ministerial situation in any court, they shall immediately upon such appointment communicate to the civil judge (or if the situation be in a Court of Small Causes to the judge of that court) for registry all necessary particulars of such landed interests, if not already fully recorded in the same district register, *with a declaration as to their truthfulness.*

(*g.*) Failure to make the returns prescribed by the foregoing rules (*d*), (*e*) and (*f*) in the manner there laid down, shall render the individual liable to *immediate dismissal* from the public service.

(*h.*) All candidates for appointment shall submit similar declarations of interest in land with their applications on pain of summary rejection, and where the appointments have to be made by Government, or confirmed by the High Court, all nominations or recommendations will state whether the person nominated or recommended is possessed of landed property and in what locality.

(*i.*) Civil judges and judges of Small Cause Courts shall keep a register, according to the annexed form, of all lands referred to in the preceding rules.

(*j.*) Principal sudr amins, district munsifs and ministerial servants on the establishment of any court, who, under the rules above prescribed, may acquire or retain lands or interest in lands, shall not

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under any circumstances take a direct part in the cultivation of such lands, and no portion of that time and attention which ought to be devoted to their public duties shall be applied to the management of such property; nor shall longer or more frequent leave of absence be allowed to them on that account. It will be the duty of civil judges to make such arrangements as shall, as far as possible, prevent the employment of judicial subordinate officers in the district within which their lands may be situated, or in such appointments as may enable them to interfere in the management of those lands.

(*k.*) The above rules apply to the acquisition of lands by *private* sale, mortgage, &c. The circular order of the Court of Sudr Udalut noted in the margin prohibits all officers on the establishment of any court from becoming purchasers of lands sold at *public* sales by order of the court in which they may be employed, or of any other tribunal subject to its control. This prohibition still remains in full force.

(*l.*) The foregoing rules do not apply to lands taken up for ordinary dwelling purposes. (H. C. Pro., 22nd December 1864.)

Register of lands within the Zillah of——held by the Principal Sudr Ameen, District Moonsiffs, Sheristadars, Nazirs, and other ministerial servants, and acquired by them prior or subsequent to their entering into the service of Government.

1	2	3			4			5	6	7	8
Name of officer.	Office.	Land acquired.						When acquired and whether prior or subsequent to employment in the public service.	By what means acquired.	Nature of interest by such officer in such landed property.	REMARKS.
		Extent.			Assessment.						
		Acres.	Coontas.	Annas.	Rs.	A.	P.				
											(C. O. S. U. No. 116 A of 7th January 1850.)

4. Principal sudr amins are not to entertain, suspend or dismiss any ministerial servant without previous intimation to the civil judge. (Sudr Pro., 10th December 1846.)

5. The appointment and removal of ministerial servants in the courts of district munsifs rest with the civil judge. (Sudr Pro., 14th November 1843.)

6. Judicial Officers are not to employ their own relatives upon any business connected with their official duties. (Sudr Pro. 24th Sept. 1843.)

7. Judicial officers are prohibited from admitting their relatives as pleaders in their courts. (Sudr Pro. 18th April 1853.)

8. Private servants of judicial officers should not be appointed to public situations in their courts. (Sudr Pro., 10th April 1861.)

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9. Relatives of the superior ministerial servants of the courts are not to be entertained in the capacity of peons in the same court. (Sudr. Pro., 18th July 1861.)

10. Judicial officers are prohibited from imposing, without the special sanction of the High Court, a fine exceeding ten rupees upon any subordinate public servant on their establishment, or exceeding half a month's pay when that may fall short of ten rupees. (Sudr Pro., 6th Dec. 1836.)

JURISDICTION.

1. If the total amount claimed exceed the pecuniary limit of the court's jurisdiction, the plaint cannot be received, notwithstanding that interest and profits may alone constitute the excess. (Sudr Letter, 30th August 1837.)

2. If want of jurisdiction be discovered after the defendant has been summoned and examined by the court, the plaint cannot be returned, but the plaintiff may be allowed under Section 97 of the Code to withdraw his suit.

3. If the jurisdiction of the court be once acknowledged, it cannot afterwards be objected to. (1, Sudr Sel., Dec. p. 34.)

4. A plaintiff may maintain separate suits for partition of immovable property where the property is situate within the limits of different districts, and is not bound to proceed in one suit in the manner pointed out in Section 12 of the Code. (III, H. C. Rep., 376.)

5. Whenever application is made to the High Court under Section 12 of the Code for authority to proceed with a suit in which a portion of the land is situated within another district, a copy of the plaint if in English, or a translation of it if in the vernacular, is to be transmitted with such application. (Sudr Pro., 30th July 1861.)

6. The application should clearly state the proportion of the subject-matter of the suit situated within the jurisdiction of each district court. The same course should be followed where the application is for permission to a judge to hear a case in which a portion of the subject-matter is situated within the jurisdiction of another judge. (H. C. Pro., 21st December 1867.)

7. An order from the High Court is necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of its jurisdiction.

Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case. (I, H. C. Rep., 103.)

8. The jurisdiction to enteratin suits against Government exists only where the cause of action arises. (I, H. C. Rep., 286.)

9. Under Clause 12 of the Letters Patent constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of government.

The words "carry on business" in that clause imply a personal and regular attendance to business within the local limits. (I, H. C. Rep., 286.)

10. Madras Act IV of 1863 does not take away the former jurisdiction given to the district munsif in respect of causes of action arising within the limits of his jurisdiction. (II, H. C. Rep., 82.)

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11. A munsif has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction. (III, H. C., Appendix 24.)

12. Where the cause of suit as stated by the plaintiff appears to be within the cognizance of a Court of Small Causes, the mere denial by the defendant of the plaintiff's right or title is not sufficient to oust the jurisdiction of the court. If it reasonably appear to the judge that a *bona fide* question of right which is not within his jurisdiction to decide is fairly raised in the suit his jurisdiction ceases. (II, H. C. Rep., 184.)

13. A suit properly alleging a malicious prosecution and special pecuniary loss resulting therefrom is cognizable in a Small Cause Court. (II, H. C. Rep., 254.)

14. A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a court of requests is established. (II, H. C. Rep., 439.)

15. Where a suit was brought for interest amounting to less than Rupees 500 due upon a bond for Rupees 1,000, not yet payable: *Held*, that a Court of Small Causes has jurisdiction to try the case, the plaintiff having had a separate and complete cause of action upon the bond entitling him to recover the annual interest as it accrued due.

The fact that forgery of the bond is set up as a defence makes no difference. (II, H. C. Rep., 469.)

16. Plaintiff sued for recovery of a sum of money lent upon the pledge of personal property and that the movable property pledged may be declared liable: *Held*, that a Small Cause Court has jurisdiction to entertain a suit to enforce a contract pledging movable property. (II, H. C. Rep., 474.)

17. A plaint was rejected by a Court of Small Causes on the ground that that court had no jurisdiction. It was then filed in the court of a district munsif who decreed for the plaintiff. On appeal to the principal sudr amin, it was objected that the munsif had no jurisdiction as the suit was one cognizable by the Small Cause Court.

Held, (the court having decided that the Small Cause Court had jurisdiction) that the district munsiff's court had no jurisdiction, that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court could not warrant the institution of the suit in the district munsif's court, and that the principal sudr amin rightly concluded that the suit ought to be dismissed. (III, H. C. Rep., 86.)

18. In an action for damages on account of defendant's refusal to take delivery of goods of the value of Rupees 3,699-6-8, sold to him by plaintiff, which goods was afterwards re-sold at a loss of Rupees 344-5-9:

Held, that the Court of Small Causes had jurisdiction notwithstanding that the original contract was for more than Rupees 1,000. (III, H. C. Rep., 170.)

19. Plaintiff sued for Rs. 31-2-3½, money paid for the use of defendant, his undivided brother. The defence was that plaintiff held family property, defendant's share of which exceeded in value the debt sued for, as also the amount for which a suit would be before a munsif under Act IV of 1863.

Held, that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the munsif under Act IV of 1863. (III, H. C. Rep., 339.)

20. A suit for rent is maintainable where a puttah in the form required by Section 4, Act VIII of 1865 (Madras), and such as the defendant was bound to accept has been tendered to the defendant,

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although no attempt has been made by a summary suit before the collector to enforce its acceptance. (IV. H. C. Rep., 149.)

21. Courts of Small Causes have no jurisdiction in suits to establish a right to maintenance; but if this right has been judicially decided, and the only question is whether arrears claimed are due or not, they may adjudicate on such a claim.

22. In cases where money lent on the security of immovable property has become payable, a suit may be brought in a Court of Small Causes for the recovery of the sum lent, but not for realization of the security by sale of the property. (H. C. Rules, 8th January 1863.)

23. At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the revenue officers of this presidency so as to bar the cognizance of such suits by the Small Causes Court.

Madras Act VIII of 1865, equally with the prior enactments abstains from authorizing the cognizance by the revenue authorities of suits for arrears of rent. (III, H. C. Rep., 213.)

24. The civil courts have jurisdiction to entertain suits brought to try questions of liability to the public revenue assessed upon land.

Where a suit is brought for alleged wrongful acts by an executive officer of Government, the circumstance that the acts complained of were done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the court to entertain the suit.

But acts done by Government, through its executive officers, not contrary to any existing right according to the laws administered by the municipal courts, although they may amount to grievances, would afford no cause of action cognizable by the civil courts. (II, H. C. Rep., 167.)

25. Civil courts have jurisdiction to enquire into the title of lands enfranchised by the inam commissioner, and the sannad granted by the commissioner may be annulled without destroying its effects as an enfranchisement of the inam.

In a suit by the adopted son of the late possesser of an inam to recover it: *Held*, that the plaintiff might recover notwithstanding the production by the defendant of title deeds showing that the land had been granted to the defendant by the inam commissioner. (II, H. C. Rep., 327, 341.)

26. The courts have no jurisdiction in matters of dispute relating purely to the constituents of religious worship and in no respect embracing any civil rights. (Sudr Pro., 30th Novermber 1861.)

27. The courts have no jurisdiction to entertain a suit regarding the withholding of religious observances due to a Hindu priest but unconnected with any special office held by him, although the non-performance of such observances may have caused some pecuniary loss. (I, H. C. Rep., 301.)

28. A committee appointed under Act XX of 1863 have power to dismiss the trustees or superintendents of temples described in Section 3 of the Act, without having recourse to a civil suit; but such power can only be exercised on good and sufficient grounds. (III, H. C. Rep., 334.)

29. Where there were not good and sufficient grounds for the removal from office of the defendants, superintendents of a pagoda, within Section 3 of Act XX of 1863, by the committee appointed under that Act, the High Court confirmed the decree of the civil judge dismissing a suit brought by the plaintiffs who had been ap-

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pointed by the committee as superintendents in place of the defendants, for the recovery of the pagoda and the property belonging to it. (III, H. C. Rep., 338.)

30. The question whether there was a sufficient ground for the dismissal of a pagoda hereditary servant by a dharmakarta is one of degree and not of principle, and must therefore depend upon the circumstances of each case. (IV, H. C. Rep., 63.)

31. A suit by an officer of a mosque, temple or religious establishment, for dismissal from his office, is not a suit for misfeasance within the meaning of Section 14, Act XX of 1863. (IV, H. Rep., 112.)

32. The suits referred to in Act XX of 1863, as needing the authority of the court for their institution, are solely suits charging trustees, managers or committees with misfeasance, malversation of the temple property, or neglect of duty. There is nothing in the Act to oust the jurisdiction of the ordinary courts over suits to establish a right to share in the management. (III, H. C. Rep., 198.)

33. Claims to succeed to hereditary offices are cognizable by the courts. (Sudr Dec., 1850, p. 122.)

34. A suit does not lie to enforce a liability specifically by the decree of a civil court in the mofussil, the right of suit in such case being taken away by Section 11 Act XXIII of 1861. (IV, H. C. Rep., 463; V, Ibid., 186 and 375.)

35. A suit by co-debtor for contribution is maintainable in Small Cause Court. (V, H. C. Rep., 200.)

36. When a district munsif has jurisdiction to try a suit as a Small Cause Court judge, he cannot transfer it to the regular side of his court on any ground of expediency. (V, H. C. Rep. 172.)

37. A suit to annul certificate granted under Act XXVII of 1860 does not lie. (V, H. C. Rep., 283.)

38. Civil court has no jurisdiction to hear the appeal against the order of sub-collector in accordance with the award of arbitrators. (V, H. C. Rep., 289.)

39. The High Court will, with reference to Section 12, Regulation II of 1802, decline to grant permission to a Small Cause Court to proceed with a suit in which one of the defendants resides within the ordinary original jurisdiction of the High Court. (H. C. Pro., 11th April and 3rd September 1867.)

40. In Section 27, Madras Act VIII of 1865, "Any civil court of competent jurisdiction" means any court which could take cognizance of a suit for the property removed. (Judgt. in Ref. Case 19 of 1869.)

41. A receiver can sue for rents. (VI. H. C. Rep., 363.)

42. To maintain a declaratory suit, some adverse act must appear to have been done by defendant, and the mere denial of title, &c. is not sufficient. (VI. H. C. Rep. 307. See Cause of Action 19.)

43. A and B jointly obtained a decree against C, and in execution, C's property was sold and B became the purchaser. Instead of paying the purchase money into court, B, with the assent of A, returned the whole sum, upon the understanding that he should give a receipt to the court for himself and on behalf of A, and afterwards pay to A his portion of the amount. B obtained sale certificate; but having failed to pay A his share, for which A brought a suit against B. *Held*, the decree was completely executed, and therefore S. 11 Act XXIII of 1861

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does not prohibit A from suing B for his share by a separate suit. (VI. H. C. Rep., 304.)

44. Where the claim was for the specific pecuniary benefit, to which plaintiff declared himself entitled on condition of reciting certain hymns in the Temple of Conjevgram; *Held* the suit is maintainable. (VI, H. C. Rep., 449.)

45. A magistrate in good faith believing himself to have jurisdiction, though he had *not* jurisdiction is protected from an action for damages, under Act XVIII of 1850. (VI, H. C. Rep., 423.)

46. Where a man seeks a declaration of title other than the possession of which he has mere possession for the period of the statute, will not justify the declaration which, allowing it to be made, ought to be based upon a finding of the title alleged by plaintiff and not upon the existence of a possession for the period required by the statute to bar the action of another. (VI, H. C. Rep., 420.)

47. A sued before a deputy Collector, to be reinstated in possession of a land wrongfully ejected by B, a zemindar, who pleaded that the land was "*pannai*", the suit was not maintainable in a revenue court. *Held*, the suit was maintainable under S. 12, Act VIII of 1865 in a revenue court. (VII, H. C. Rep., 53.)

48. The valuation of matters of litigation for the purpose of determining the jurisdiction of moonsiff is to be made in the mode prescribed by S. 11, Reg. VI of 1816, and Reg. III of 1833, and not in that prescribed in the Stamp Acts. (VI, H. C. Rep 151.)

☞ See "Small Cause Courts."

LEAVE OF ABSENCE.

1. In forwarding applications for leave from any subordinate judicial officer of the same district, the civil judge is to state whether in his opinion the leave should be granted, and whether any person should be appointed to act for the applicant during his absence. (Sudr. Pro., 21st August 1856.)

2. Any judicial officer may occasionally absent himself from his station, without loss of salary, for a period not exceeding five days, provided no inconvenience be caused by his absence, but he must make a report to his official superior on each occasion. (Sudr. Pro., 6th November 1841, and 20th Dec. 1844.)

3. Sunday will not be reckoned among the five days during which judicial officers may absent themselves from their stations without loss of salary. (Sudr Pro., 16th July 1855.)

4. Absence for five days cannot be added to the Christmas or other such general public holidays. (Sudr Pro., 8th November 1860.)

5. A sheristadar may occasionally be allowed leave of absence for five days, without loss of salary, at the discretion of the judge in whose court he is employed. (Sudr Pro., 4th February 1858.)

☞ See para. 11, "District Munsifs."

LIBRARY.

1. All books distributed to the courts being the property of Government, are to form part of the court Library, and never to be removed from the station by any officer leaving it. Sudr (Pro., 6th December 1851.)

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2. The Head Writer is to keep a list of all books in the library, and will be responsible for any book that is missing; and on a change occurring in that office, charge of the library is to be formally given and received. (Sudr Pro., 2nd November 1861.)

LIMITATION OF SUITS.

1. In the case of landlord and tenant, the law of limitation begins to run from the time that the tenant ceases to pay rent. (Sudr Dec., 1852, pp. 44 and 71.)

2. Where a debt is payable by instalments, the law of limitation runs from the date on which each instalment fell due, and not from the date of the first instalment. (Sudr Dec., 1854, p. 225, and Sudr Dec., 1855, pp. 43, 133 and 237.)

3. In suits on bonds or other instruments for the payment of money, the limitation of time is not to be reckoned from the date of execution of instrument, but from the date on which the money became payable.

4. In a suit for the recovery of money lent upon an agreement that it shall be payable upon demand: *Held*, that the statute of limitations begins to run from the date of the loan. (II, H. C. Rep., 472.)

5. The day mentioned in a bond for the re-payment of money as that on which the money is to be re-paid, is to be excluded from the period of computation under the Limitation Act. The borrower in such case has, until the last moment of the day mentioned for the payment, and the right to sue accrues not on but from that day. (Judgt. in Ref. Case 17 of 1869.)

6. The plaintiff's voluntary absence abroad after attaining majority does not bar the operation of Act XIV of 1859. (II, H. C. Rep., 113.)

7. The Act for limitation of suits (Act XIV of 1859) came into operation on the 1st of January 1862.

By an order of civil court it was declared that all suits brought on the 4th January 1862, when the court was reopened after adjournment for the Christmas holidays, should be treated as if brought under the old law of limitation.

A suit was brought on the 4th of January 1862, which was barred by Act XIV of 1859. *Held*, that the Act applied, and that the suit was barred. (II, H. C. Rep., 268.)

8. The operation of the Limitation Act is not suspended during the recess of the court. (II, H. C. Rep., 468.)

9. A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations does not furnish a new starting point for the operation of the statute. (III, H. C. Rep. 378.)

10. The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. (II, H. C. Rep., 114.)

11. Mere laches, or indirect acquiescence, short of the period prescribed by the Statute of Limitations, is no bar to the enforcement of a right absolutely vested in the plaintiff at the time of suit.

Semble, the doctrine of acquiescence or laches will apply only to cases, if such there are, in which they can be regarded as positive extinguishment of right. When they go merely to the remedy, the courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the Legislature. (II, H. C. Rep., 270.)

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12. Though a plaint has been registered, the court may reject it under Act VIII. of 1859, Section 32, as barred, by the Act of Limitation. (II, H. C. Rep., 51.)

13. The Statute of Limitation, if relied upon as a ground of defence, should be pleaded in every case in the original court. (II, H. C. Rep. 238.)

14. Where the Statute of Limitation was not pleaded in the original court: *Held*, that it might be set up in the appeal court if evidence could be taken there in reply to such plea.

15. Where upon the admitted facts it is clear that the statute is a bar, it may be pleaded for the first time in regular appeal or in a petition for review of judgment in regular appeal, that being part of the proceedings in regular appeal. (III, H. C. Rep., 258.)

16. On special appeal, the Statute of Limitation cannot for the first time be pleaded unless the facts which raise the plea are admitted. (I, H. C. Rep., 358.)

17. The period of limitation contained in Section 246, Act VIII of 1859, is applicable only to a case in which the procedure prescribed by that Section has been adopted. (III, H. C. Rep. 139.)

18. The effect of the last sentence of Section 246, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, viz., a regular suit to be brought within one year from the date of the order made against him; and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date. (III, H. C. Rep., 220.)

19. Clause 2, Section 1 of Act XIV of 1859, does not refer to suits brought by one Government servant against another for the disbursement of salary received by the latter on behalf of the former. (IV, H. C. Rep., 43.)

20. Clause 5, Section 1 of Act XIV of 1859 is only applicable to orders which the civil courts are empowered to pass deciding matters of dispute properly raised for hearing and determination by a summary proceeding between the parties disputing. (Judgment in R. A., 36 of 1868.)

21. The plaintiff agreed with the defendant that in consideration of the possession and use of certain land, and a third of the produce for the season, he would provide seed and labor and carry on the cultivation of the land. In a suit to recover the cultivator's share of the produce:

Held, that the limitation was that prescribed by Clause 9, Section 1, Act XIV of 1859. (II, H. C. Rep., 387.)

22. The defendant, the payee of a promissory note, endorsed it to the plaintiff. The endorsement was "Pay to K. M. (plaintiff) or his order." The promissory note had been registered previous to the endorsement to plaintiff. A suit was brought by the plaintiff three years after the date of the endorsement to recover the amount of the note from the defendant.

Held, that the suit was barred by the Law of Limitation. (Judgment in O. S., 221 of 1869.)

23. When land is hypothecated, the contract gives the creditor an interest in immovable property, and the period of limitation for actions on such contract is twelve years under Clause 12 of Section 1 of Act XIV of 1859. (II, H. C. Rep., 51.)

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24. Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief sought was that payment of principal and interest may be enforced, both as a simple contract liability and as a debt secured by a collateral mortgage of immovable property: *Held*, that the suit was one for the recovery of an interest in land under Section 1, Clause 12 of Act XIV of 1859, and was not barred for 12 years. (II, H. C. Rep., 307.)

25. Hypothecation creates an interest in immovable property such as is mentioned in Clause 12 of Section 1 of Act XIV of 1859, and therefore the period of limitation for suits arising out of documents of hypothecation is 12 years. (III, H. C. Rep., 92, and V, H. C. Rep., 364.)

26. Plaintiff sued to recover certain lands attached to two villages of which he became proprietor in 1857. It was found that the defendants had been in possession for upwards of 50 years before the suit was brought.

Held, that the defendants' possession was hostile, and the suit was therefore barred by the Statute of Limitation. (II, H. C. Rep., 391.)

27. The appellant, a zemindar, sued to recover a portion of the zemindari granted by his grandfather upwards of 40 years ago, upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802, that in the absence of the observance of the formalities there prescribed, the grant was void.

Held, that more than 12 years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. (III, H. C. Rep., 67.)

28. In a suit to enforce the right to share in property on the ground it was joint family property: *Held*, that upon the construction of Clause 13, Section 1 of Act XIV of 1859, the claimant, in order that the statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims. (III, H. C. Rep., 99.)

29. In a suit for future and past maintenance, the parties being governed by Aliyasantana law: Found that for twenty years before the suit, plaintiff lived apart from the defendants, and the other members of the family and supported herself without receiving or applying for anything towards her maintenance out of the family property in the possession of the defendants or obtaining any recognition of her right to maintenance.

Held, per *Scotland, C. J.*, that assuming the Aliyasantana law recognzies the right of the plaintiff to enforce separate maintenance as a charge upon the estate, the plaintiff's claim was barred by Section 1, Clause 13 of Act XIV of 1859.

Per *Collett, J.* It is doubtful whether Section 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within Section 13, then it was one to recover an interest in immovable property, and was equally barred by Clause 12, Section 1 of the Limitation Act. (IV, H. C. Rep., 137.)

30. In a suit by a co-parcener to enforce a division of family property, it is necessary in order to constitute the bar provided by Clause 13, Section 1 of the Limitation Act, to prove possession and enjoyment of the property as the possessor's own separate property, to the absolute exclusion of the person suing to enforce the right to share for 12 years computed either from "the death of the person from whom the property alleged to be joint is said to have descended"

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or from "the last payment to the plaintiff or any person through whom he claims by the person in the possession or management of such property or estate on account of such alleged shares." The question of fact whether there has been such exclusive possession or enjoyment must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow the plaintiff any part of the benefits of the joint property. (Judgt. in S. A., 663 of 1868.)

31. The period of limitation for a suit to redeem a mortgage of immovable property is (by Clause 15, Section 1, Act XIV of 1859) 60 years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting.

Semble, it makes no difference that the hostile possession is supposed to have commenced on a claim of defendant to a title altogether inconsistent with the mortgage. (III, H. C. Rep., 137.)

32. The 15th Clause of Section 1 of Act XIV of 1859 does not require that the acknowledgment should be given to the mortgagor. (IV, H. C. Rep., 359.)

33. Where plaintiff's ancestors mortgaged land, and the mortgagee obtained possession on condition that the produce should extinguish interest: *Held*, that the plaintiff's suit was not barred by the law of limitation, although the transaction took place 12 years before the passing of Regulation II of 1802. (II, H. C. Rep., 382.)

34. In a suit upon a written instrument evidencing the loan of money, where there is no legal obligation to register the instrument, the period of limitation is six years. (II, H. C. Rep., 401.)

35. Plaintiff sued upon a document promising to pay the price of grain supplied at defendant's request: *Held* that, it being a contract in writing which could not have been registered by any law in force at the period of making, the time of limitation was that prescribed by Clause 16, Section 1 of Act XIV of 1859. (II, H. C. Rep., 329.)

36. In a suit to receive damages for loss caused during the years 1862, 1863 and 1864 by defendant's interference with plaintiff's right to the flow of water from a canal: *Held*, that Clause 2, Section 1, Act XIV of 1859 did not apply; that, supposing plaintiff still in possession, the period of limitation is that given by Clause 16, Section 1, viz., 6 years. If plaintiff be not in possession at the time of bringing the suit, the period prescribed in Clause 12, Section 1, viz., 12 years, is the limit. (III, H. C. Rep., 3, and V, Ibid, 6.)

37. Defendants carried off a quantity of unthreshed paddy from the plaintiff's threshing-floor: *Held*, that the plaintiff's right of action is not barred for 6 years. (III, H. C. Rep., 165.)

38. In a suit to recover mesne profits against a trespasser, the period of limitation is six years. (IV, H. C. Rep., 302.)

39. In a suit to recover from the defendant the amount of purchase money paid by the plaintiff upon a sale to him of certain land by the defendant's father and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father: *Held*, that the period of limitation was six years. (IV, H. C. Rep., 266.)

40. Part-payment, though evidence by writing, is not in itself an admission of a debt within Section 4 of Act XIV of 1859.

To entitle a plaintiff to the benefit of a new period of limitation under that section, he must prove that the party sued has in writing authen-

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tioned by his signature, either in express terms or by reasonable construction, acknowledged and admitted that the debt or a part thereof is due from him.

This signature need not be formally subjoined or added to an acknowledgment written by the debtor, unless it appears from the writing that such signature was intended, or unless the writing would be incomplete in itself as an admission without a signature.

If the body of admission is in the debtor's own handwriting and contains his signature, and was given over by him as complete in itself, it would be an acknowledgment in writing within the meaning of Section 4. (II, H. C. Rep., 79. Sec. V, H. C. Rep., 90.)

41. The plaintiff sued three executors for the balance due of testator's simple contract debt of more than three years' standing. A part-payment had been made by the defendants within the three years previous to the commencement of the suit. Two of the defendants had also, but during their testator's lifetime, given a personal undertaking in writing to pay the debt out of a fund coming to their hands. The defendants had also signed as executors and sent a letter to the plaintiff informing him that they had registered his claim against the testator's estate, and that notice would be given to him when the assets, if any, were to be distributed:

Held.—First, that the case was not taken out of Act XIV of 1859 by the part-payment, and secondly, that neither the personal undertaking nor the letter was such an acknowledgment in writing as to bring the case within Section 4 of the same Act.

Signature by an agent is insufficient to take a case out of Act XIV of 1859. (II, H. C. Rep., 84.)

42. Although part-payment is not sufficient to give a new period of limitation without a written acknowledgment of the debt within Section 4 of Act XIV of 1859, that Section does not require that the writing should express in terms a direct admission that the debt or part thereof is due. It is left to the court to decide in each case whether the writing, reasonably construed, contains a sufficient admission that the debt or part of it is due. (II, H. C. Rep., 307.)

43. An admission of a debt with the appended averment that it is not yet payable in point of time may be an acknowledgment of a debt under Section 4 of Act XIV of 1859. An assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowlegment of a debt, but the allegation of incidents out of which a debt may at some time arise. (III, H. C. Rep., 308.)

44. The effect of Section 11, Act XIV of 1869 is to provide a distinct period of limitation applicable to every case in which but for legal disability the suit would be barred. (IV, H. C. Rep., 54.)

45. Section 14 of Act XIV of 1859 applies to the case in which the plaintiff is unable, after due diligence, to procure due service upon the defendant of a summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and will prevent a suit against the defendant's representatives from being barred. (IV, H. C. Rep., 1.)

46. A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be re-distributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners.

In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical

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allotment of the lands, and in 1853 such decree, which clearly recognised the existence and validity of the custom, was affirmed on appeal. *Held*, that the litigation which commenced in 1851 was sufficient to prevent the law of limitation from barring the plaintiff's right to sue, and that the circumstance that some only of the present defendants were parties to such litigation could make no difference with regard to the limitation bar. (II, H. C. Rep., 1.)

47. Where a plaintiff sues upon his jenm title, having previously instituted a suit in which he unsuccessfully set up his kanam right, the latter suit cannot avail to prevent the statute of limitations from running against him. (II, H. C. Rep., 266.)

48. Section 15 of Act XIV of 1859 does not abridge any rights possessed by a plaintiff, but is intended to give him the right if dispossessed otherwise than by course of law, to have his possession restored, without reference to the title on which he holds. (II, H. C. Rep., 313.)

49. An application for execution of a decree obtained in 1858 under the old law as to limitation was made in January and disposed of in February 1864, and a subsequent application was made in November 1867. *Held*, that the first application was in time, but the second application was barred by Section 20, Act XIV of 1859. (IV, H. C. Rep., 148.)

50. The day on which an application for execution is made is not to be reckoned in computing the three years alluded to in Section 20, Act XIV of 1859. An order dismissing an appeal for default under Section 346 of the Civil Procedure Code is not a new decree from the date of which the period of limitation beings to run anew. (IV, H. C. Rep., 33.)

51. Section 20 of Act XIV of 1859 is not applicable to a decree until the liability under it has become enforceable by execution. (IV, H. C. Rep., 173.)

52. The period of limitation provided by Section 20 of Act XIV of 1859 runs not from the date of a former application for process of execution to enforce the decree, but from the date of the order upon the application.

An application to enforce the execution of a decree was made on the 30th August 1865. The application was dismissed by an order of the court dated the 14th October 1865. The second application was made on the 16th October 1868.

Held, that the second application was not barred by the Limitation Act. (IV, H. C. Rep., 260, and V, Ibid, 105, 453.)

53. A decree-holder applied for the sale of certain property then under attachment in the suit. The court refused to issue process for the sale on the ground that the property could not be sold as certain claims and suits repecting it were still pending. The claims and suits having been determined, the application was renewed. More than three years had elapsed between the date of the order on the first application and the date of the renewed application.

Held, that the second application was not barred, the order upon the first application operating simply as a temporary stay of process for the sale of the property, and there was a pending proceeding to enforce the decree during the stay. (IV, H. C. Rep., 261.)

54. An attachment of property in execution of a decree operates *de die in diem* as process of execution upon a decree. (IV, H. C. Rep., 316.)

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55. Process of execution cannot always be issued for three year's arrears under a decree directing annual payment of money for a series of years.

The petitioner, who had obtained a decree for an annual sum for maintenance during her life, alleged satisfaction of the decree up to a period less than three years from the date of the application for execution of the decree. The judge was not satisfied of the alleged satisfaction and dismissed the application for execution.

Held, that the petitioner was entitled to execution of the decree at any time from the date at which the first instalment became due, but that she was not entitled to have process of execution issued within three years from the date at which the second instalment or subsequent instalments became due. (IV, H. C. Rep., 275.)

56. The filing of an application for execution is a proceeding within the meaning of Section 20 of Act XIV of 1859, and gives the decree-holder a new period of three years. (IV, H. C. Rep., 159.)

57. In order to keep a decree alive under Section 20 of Act XIV of 1859, it is not necessary that the application for execution should be made with the intention of enforcing the decree at that time. (IV, H. C. Rep., 75.)

58. An application for a certificate under Act XXVII of 1860 is not a proceeding to keep in force a decree within the meaning of Section 20 of Act XIV of 1859. (IV, H. C. Rep., 89.)

59. The appearance of the person in whose favour a judgment is given as respondent on an appeal, is not an act done for the purpose of keeping the judgment in force within the meaning of Section 20, Act XIV of 1859. (IV, H. C. Rep., 32.)

60. A Hindu daughter can sue, for her paternal property within twelve years after her mother's death. Defendant's possession during the life-time of her mother is not adverse to the plaintiff. (V, H. C. Rep., 428.)

61. To suits upon unregistered bonds, which might have been registered, the period of limitation is three years. (V, H. C. Rep., 68.)

62. The writing, under Sec. 4, Act XIV of 1859, must contain within itself an admission that a debt is due ; and oral evidence is not admissible to add to its meaning : (The endorsement of a payment on a bond in the words :—"Rupees 50 paid," and signed by the defendant, was held not to be an acknowledgment.) (V, H. C. Rep., 90.)

63. Sec. 14, Act XIV of 1859, does not apply to a case brought on a razeenamah, which had been treated as a decree. (V, H. C. Rep., 93)

64. The time, when it was found excessive, was not computed under Sec. 14. (V, H. C. Rep., 407.)

65. Applications were made after more than three years from the date of original decree, but within three years from the date of decrees in the regular and special appeals, affirming the original decree. *Held*, that Section 20, Act XIV of 1859, did not bar the issuing of process ; and the period of limitation applicable to decrees of the High Court, on appeals from the decrees of mofussil courts, was under Section 20 of the said Act. (V, H. C. Rep., 215.)

66. Although the prior application was nugatory because it was not accompanied by a certificate under Act XXVII of 1860, yet the subsequent application (within three years from the date or prior application) was not barred under Section 20, Act XIV of 1859. (V, H. C. Rep., 453.)

67. In a suit to recover money lent more than three years before

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the suit, it was held that a verbal promise was not sufficient to prevent the application of the Limitation Act. (VI, H. C. Rep., 51.)

68. An unappropriated payment is to be applied to the earliest debt, although the debt is barred by the law of limitation, where the facts do not raise any question which might affect such priority. (VI, H. C. Rep., 32.)

69. To render an arrangement, come to orally for the payment of the balance of an antecedent debt on a settlement of accounts available in support of a suit brought after the expiration of the period of limitation, it must clearly be shown to have amounted to a new valid contract to pay the balance which extinguished the original cause of action.

Payments unapplied by either the debtor or creditor, should be appropriated to the earlier items making up the debt due. (VI, H. C. Rep., 197.)

70. When the document must have been fraudulently concealed from the knowledge of the plaintiff, and he must through the fraudulent concealment, be unaware of its existence then, S. 9 Act XIV of 1859, runs against the person guilty of the fraudulent concealment or accessory thereto, from the time at which plaintiff had the means of producing or compelling its production, if it is a document necessary for establishing such right of action (VII, H. C. Rep.,

☞ See Act IX of 1871.

MESNE PROFITS.

1. A suit for mesne profits alleged to be due upon land between the institution of a former suit and the execution of the decree, cannot be maintained. Vide Section 11, Act XXIII of 1861. (II, H. C. Rep., 435.)

2. A plaintiff in possession under a decree for land and mesne profits, applied for further execution as to mesne profits and obtained an order from the court of first instance. This order was reversed by the appellate court leaving it still open to the court of first instance to make a further order. Plaintiff, however, instead of applying again for execution, instituted a fresh suit for mesne profits in the same court. The civil judge rejected the plaint. *Held*, that Section 11 of Act XXIII of 1861 warranted the rejection of the plaint on the ground that the mesne profits to which plaintiff laid claim in the suit were payable in respect of the subject-matter of the former suit. (III, H. C. Rep., 237.)

3. Where no liability to mesne profits is imposed by a decree, Section 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine questions regarding the amount thereof when the right thereto has been ascertained by the decree. (IV, H. C. Rep., 257.)

MILITARY.

1. Whenever any native officer, soldier or other person in Her Majesty's Indian Army, is sentenced by a civil or criminal court to suffer imprisonment for any period exceeding six days, or to pay a fine exceeding in amount half a month's salary of such native officer, soldier or other person, the judge or magistrate passing the sentence shall transmit a memorandum under his signature, to the officer commanding the regiment to which the person sentenced belongs, setting forth the offence of which he has been convicted, and the

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ishment awarded in his case, to enable the officer commanding to e the entry in the regimental defaulter book, required to be le under para 1921 of the Madras Army Regulations. (Madras ernment Order 709 of 14th May 1872.)

e European soldier doing duty as an Army School master, not ng liable to a Court of Requests, can be sued in Cantonment Small se Courts. (VI, H. C. Rep., 83.)

ee: 24 "Processes."

OATH.

A member of the Church of England is not exempt by law from ng an oath in a court of justice in India, although he may rtain sincere objections against taking an oath on the Bible, and illing to make an affirmation binding on his conscience. (II, H. Rep., 246.)

A Hindu who has become a convert to Christianity, is not under gal obligation to speak the truth, unless his evidence be given er the sanction of an oath on the Holy Gospels. (IV, H. C. Rep., .)

Though the regulations admitting of settlement of suits by oath e been repealed, there is nothing to prevent the court's facilitat- a settlement of this nature by satisfying themselves that the sary conditions are fulfilled, if the parties mutually consent. (H. Pro., 3rd March 1868)

☞ See Act V of 1840, and VI of 1872.

ORDERS.

1. In every civil proceeding, the parties or their pleaders are to be quired to point to the express provisions of the Code upon which y rely, and the courts are also to specify the particular sections der which their orders are passed. (Sudr Pro., 21st April 186 .)

2. Orders passed on petitions are invariably to contain a brief stract of the contents of the petitions, and the grounds upon which e orders are based. (Sudr Pro., 19th November 1849.)

3. Every order passed by a judicial authority should set forth minutely the matter brought under hearing before him, and the grounds of his decision thereon; and the subject of any prior proceedings or other documents to which he may have occasion to refer, should be in like manner set forth, so that every order may be framed in such a manner that it shall be self-explanatory. (Sudr Pro., 17th February 1853.)

4. Orders are generally to be written in the vernacular language of the judge; but if such language be not English, and the judge be conversant with English, he may write his orders in English.

5. Orders not written in the language of the court, need not be translated into that language, unless an authenticated copy be applied for, and the party desire to have it in the language of the court. (Sudr Pro., 20th August 1853.)

6. Orders issued by the superior courts are merely to be conveyed in proceedings, and not to be accompanied by any precept.

7 Section 119 of Act VIII of 1859 does not empower a judge to set aside a decree passed under Section 148 of the same Act. (IV, H. C. Rep., 1856.)

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PARTIES TO SUITS.

1. Suits by and against minors shall be brought and defended in the minor's name by a guardian to be appointed for that purpose by the court and removable by the court, except in cases falling under Section 23 of Regulation V of 1804.

This refers only to guardians *ad litem*, and guardians *ad litem* should always be appointed by the court in which the litigation is pending. (H. C. Pro., No. 2277 of the 18th November 1869.)

2. Suits by and against persons of unsound mind or deaf and dumb, or otherwise incapable of conducting their own affairs, shall be brought and defended in the names of such persons by a guardian to be appointed for that purpose by the court, and removable by the court: provided that if a person shall have been adjudged lunatic by a court of competent jurisdiction, and a committee of his person and estate or a manager of his estate shall have been appointed, suits by and against such person shall be brought and defended by the said committee or manager in the joint names of himself and the said lunatic.

3. In suits brought by guardians on behalf of minors or persons of unsound mind, or deaf and dumb, or otherwise incapable of conducting their own affairs, such guardians shall give a written undertaking, to be answerable for the costs of suit.

4. Only the persons interested in the subject-matter of the suit should appear as parties on the record, and the names of their vakils or agents should be excluded.

5. Where a person, who ought to have been joined as a defendant has not been sued, judgment should not on that account be given against the plaintiff, but such person should be made a party by the court.

6. The Code does not admit of any supplemental plaint. It will be sufficient for the court, where there is a defect of parties, to state in its order (under Section 73 of the Code) the name and description of the person to be made a party, and to direct that a notice be issued to him accordingly.

7. Upon discovery of a defect of parties in an appellate court, that court may direct the addition of the proper parties, and may frame and refer for trial to the lower court the issue or issues rendered necessary by such addition, and the notice under Section 73 to the parties added will be issued by the lower court

8. No steps will be taken by the court to bring in the representative of a deceased plaintiff or defendant except on the application of the parties, and such application should ordinarily be made within three months, unless from special circumstances the court should be satisfied that a further period was reasonable. (H. C. General Rules, 23rd July 1869.)

9. When a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband, and then adopted a son: *Held*, that under Section 73 of the Code the adopted son might be made a co-plaintiff. (I, H. C. Rep., 197.)

10. In a suit by A on a bond in favor of B, the plaintiff may show by oral evidence that the money secured by the bond was his own, but where B has died, A must either entitle himself as B's personal representative or make B's personal representative a party to the suit. (I, H. C. Rep., 452.)

11. Where one of several co-debtors satisfies the debt, his cause of action for contribution accrues against all at one and the same time

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and under Section 8 of the Code the contributors may all be included as defendants in one plaint. The decree, if in favor of plaintiff, should order payment separately by each defendant of the amount only of his just proportion of the debt. (III, H. C. Rep., 187.)

Such suits are also maintainable in Courts of Small Causes. (V, H. C. Rep., 200.)

12. The words in Section 11, Act XXIII of 1861, "questions arising between the parties to a suit," cannot be limited to questions arising between those who were parties to the suit at the date of the decree; but, after decree, the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under Sections 210 and 216 of the Code, become parties to the suit for the purpose of execution, and questions arising between them are questions arising between the parties to the suit within the meaning of Section 11. (III, H. C. Rep., 267.)

13. Convenience requires that in suits where there is community of interest amongst a large number of persons, a few should be allowed to represent the whole; and if the whole body be represented in the suit, then it is proper that the whole body should be bound by the decree, though some members of the body are not parties named in the record. (III, H. C. Rep., 226.)

14. The puttadars of a ryotwary village have not such a common interest as puttadars in all their boldings, that they can jointly sue for the recovery of them. If in any case such a right exist, it must be established by evidence. (IV, H. C. Rep., 108.)

15. If there be two or more plaintiffs, and one of them withdraw from the suit under Section 97 of the Code, it may nevertheless be proceeded with to judgment as regards the remaining plaintiffs.

16. A witness or party to a civil suit whose attendance is required on a trial before a judicial tribunal, is protected from arrest on civil process during the time reasonably occupied in going to, attending at, and returning from the place of trial. (IV, H. C. Rep., 145.)

PARTNERSHIP.

1. A member of an ordinary trading partnership dissoluble at will cannot, except under special circumstances, seek an account without praying a dissolution. (II, H. C. Rep., 28.) See 6 "Res. Judicata" Ch. XI, Act IX of 1872.

PAUPERS.

1. If a plaintiff, who was originally admitted to sue as a pauper, become possessed of property while the suit is pending, he may, upon the application of the opposite party, and satisfactory proof of the fact, be dispaupered, and be required to put in the requisite stamps within a reasonable period, and if he neglect to do so, the suit shall be dismissed.

2. If, after the commencement of the suit and before decree, the plaintiff shall become unable to pay the stamps required for the further prosecution of the suit, he may present a petition for permission to prosecute the suit *in forma pauperis*, and the proceeding on such petition shall as far as practicable be the same as on a petition to sue *in forma pauperis*.

3. Where judgment is given against a pauper with costs, and the sale of his property does not realize sufficient to meet the whole costs, the pleader's fees should first be paid, then the dues of Government.

4. If fresh defendants be brought into a suit instituted by a pauper plaintiff, they are entitled to show cause against his being allowed

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to sue *in forma pauperis* if they ought to have been made defendants in the first instance.

5. It is not necessary on the death of a pauper plaintiff, to direct that the suit shall abate; his heir may be allowed to carry on the suit as a pauper, provided he first prove his paupersim in the manner prescribed by the Code.

6. Paupers can only obtain authenticated copies of decrees on the same conditions as other suitors.

7. In pauper suits, as in others, the plaintiff must pay into court the expenses of his witnesses before the summons can be served. (H. C. General Rules, 23rd July 1869.)

PETITIONS.

1. Petitions to the High Court may be presented, and all proper applications made at the registrar's office on any day between the hours of 11 A. M. and 4 P. M., except Sundays and holidays and during an adjournment of the court.

2. Every application to the High Court (the mode of proceeding on which is not otherwise provided for by law) shall be upon a petition registered three clear days before the day on the which the application is made, and stating without unnecessary prolixity the facts on which the application is grounded; such petition shall be verified at the foot thereof by a declaration in the following form or to the like effect signed by the petitioner or petitioners, or by his pleader or attorney if the facts are within his knowledge and belief.

(*a*) "I (*or* we) the abovenamed petititoner (*or* petitioners) do declare (*or* do each of us declare) that the statements therein contained are true to the best of my knowledge and belief (*or* of the knowledge and belief of each of us.")

(*b*) Every such petition shall, when presented by a pleader or attorney, bear his signature as pleader or attorney, and when in English, and the petitioner appears in person and is a native who does not understand the English language, the petition shall be explained to him either by one of the translators or interpreters on the appellate side of the court on its presentation, or by a translator or interpreter of any one of the courts in the mofussil, and shall be signed or marked, or the signature or mark acknowledged before such translator or interpreter, who shall certify the same therein in the following form or to the like effect:

"The contents of this petition were explained by me and the signature or mark (*or* signatures *or* marks) made (*or* acknowledged) before me on the——day of———1866." (H. C. Order, 3rd January 1868.)

PLAINTS.

1. The intent of Section 26 of the Code is to secure the definite statement of the subject and object-matters of the litigation, and the words "so far as they can be ascertained" were not intended to compel a plaintiff to insert *every name and title* to which the defendant may conceive himself entitled. (III, H. C. Rep., 31.)

☞ Reversed by Privy Council considering the facts and the importance of giving in India the title (such as "Honorable" "Maharajah," &c.) of the parties, 25th June 1872.

2. The verification of the plaint, under Section 27 of the Code, need not be made by the plaintiff in court. (Sudr Pro., 2nd February 1860.)

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3. If the plaintiff be absent, the plaint need not invariably be verified by his authorized agent, but may be verified by any one personally acquainted with the facts of the case.

4. Persons competent to subscribe and verify plaints on behalf of plaintiffs, under Section 18 of the Code, are those who are able to depose to the facts of the case and have a knowledge of the circumstances forming the ground of action, which the plaintiff does not possess, as for instance, shopmen employed in the sale of the goods of their employers and the like; not mooktears, or other such agents. (Sudr Pro., 19th March 1860.)

5. The plaint in such cases may be brought already subscribed and verified; but will be liable to rejection, if there should be no cause for allowing any person other than the plaintiff to perform those acts, or if the person by whom they may have been performed should not be considered competent for the purpose. (Sudr Pro., 19th March 1860.)

6. Plaints, memoranda of appeal, and motions, are to be received by the sheristadars of the courts daily. The date of presentation must be noted on them by the sheristadars, who should bring them the same day to the judge for his initials, or to be stamped in his presence. (H. C. Pro., 19th June 1866.)

7. Every plaint connected with immovable property should be accompanied with a slip in the following form, (which will be supplied by the court to parties) and having filled in the particulars in the proper column. And every copy of the decree given to the party for the purpose of appealing shall similarly have attached to it a slip containing the like information certified by the chief ministerial officer of the court.

When the required information is wanting, the plaint or petition of appeal may be received, but shall not be filed until the party furnishes the information.

Nothing in the above rules is intended in any way to affect the entry in the body of the plaints or decrees of the particulars required by Sections 26, 189, or 360 of Civil Procedure. (H. C. Pro., No. 1054 of the 28th May 1870.)

Appeal should not be *rejected* because it did not contain the particulars required by this order. (VI, H. C. Rep. 422.)

FORM.

Particulars regarding immovable property with reference to para. 5 of Section 7 of Act VII of 1870.

I.	Rs.	A.	P.	II.	Rs.	A.	P.
ZEMINDARY (permanently settled Estate or part of an Estate).				RYOTWARY (temporarily settled Estate or part of an Estate).....			
If separately assessed in Collector's register, the amount of revenue payable annually. (Note *a*.)				If separately assessed in Collector's register, the amount of revenue payable annually. (Note *b*.)			
If not separately assessed in Collector's register the market value. (Note *d*.)				If not separately assessed in Collector's register, the market value. (Note *d*.).....			

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III.	Rs.	A.	P.	IV.	Rs.	A.	P.
Inam (land paying no revenue or partly exempted or charged with quit rent).....				Other Immovable Property.			
The net profits accruing from the land for the Fasli preceding the date of presenting plaint ...				If houses or gardens, the market value. (Note *c*.)			
or							
If no profit accrued, the market value with reference to the value of similar land in the neighbourhood. (Note *c*.)							

(Signed) _____

8. Though a plaint has been registered, the court may reject it under Act VIII of 1859, Section 32, as barred by the Act of Limitation. (II, H. C. Rep., 51.)

9. Whenever a plaint is *rejected*, a judicial order is to be recorded in the diary of the court, and the original plaint is also to be placed among the records, but not to be numbered or entered in the register.

10. Where two or more causes of action have been joined in the same plaint, and a separate trial of each is ordered under Section 9 of the Code, fresh plaints are to be taken, but if the original stamp be sufficient to cover the whole claim, such additional plaints may be written on plain paper. (Sudr Pro., 16th April 1860.)

11. A plaint will not be rejected under Section 32 of the Code if the subject-matter alleged raises a fair question of claim or right for trial and determination between the parties. The mere unlikelihood of the plaintiff's success is not enough to justify the rejection of the plaint. (I, H. C. Rep., 240.)

12. Where the plaint in a suit to establish a right to landed property and to recover arrears of rent alleged no specific acts of ownership since 1845, but contained a statement general enough to let in evidence of such acts, and it did not appear that the plaintiff had been questioned: *Held*, that the plaint should not have been rejected under Section 32 of the Code on the ground that it appeared to the court that the right of action was barred by lapse of time. (I, H. C. Rep., 322.)

13. Where the lower court rejected a plaint on the ground of an improper joinder of causes of action, and the High Court were of opinion that there had been no improper joinder, the order of the lower court was reversed, and the civil judge directed to deal with the case under Section 31 of the Code. (II, H. C. Rep., 346.)

14. Whenever a plaint is returned, the grounds and date of return are to be endorsed on the back of such plaint, and signed by the judge, a copy of such endorsement being placed on record.

15. Where a plaint is returned for amendment under Section 29 of the Code, the order of return should specify a time for such amendment.

Where the plaintiff within three years from the arising of the cause of action presented his plaint which was returned to him for amendment, but without specifying a time for such amendment, and the

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plaint was reproduced and filed some days beyond the three years, and the defendants pleaded the statute of limitation: *Held*, that the date of commencing the action was that of the original presentation of the plaint. (I, H. C. Rep., 427.)

16. A defect which appears on the face of the plaint which would have rendered it inadmissible, is not a matter for amendment at the final hearing of the suit, (III, H. C. Rep., 372.)

PLEADINGS.

1. Pleadings put in by pleaders in the High Court are to be written in English; but where any pleading may have been prepared by the party in the vernacular, and transmitted to his pleader for presentation to the court, it will be received and filed, provided the pleader put in, within ten days, an amended petition under his signature, which may be on plain paper.

2. Persons whose vernacular is English, may put in their pleadings in that language; provided that if the defendant or the judge of the court be not acquainted with English, a translation of the pleading in the language of the court must likewise be put in under the signature of the party or his pleader. (Sudr Pro., 18th November 1844.)

3. No pleading is to be registered unless the judge has examined the same with reference to Sections 29 to 34 of the Code, and ordered that it shall be brought on the file.

4. If a pleading be put in under a general power of attorney, the agent must deliver a certified copy of such power to be placed with the record of the suit.

5. Where two or more pleadings are in any way connected with each other, a note is to be made by the party or his pleader on each of such petitions, describing the others with which it is connected.

6. No anonymous petition is to be brought on the file. (Sudr Letter, 28th July 1837.)

7. No pleading will be filed or noticed which is forwarded through the post or communicated by telegraph.

8. No pleading will be entertained which is couched in language disrespectful to the court, or to the judge of any other court, or to any other public officer, or which contains terms of reproach against the other party.

9. No pleading will be registered which is written in an illegible hand or in an unintelligible style.

10. Verbal corrections may at any time be made in pleadings, with the permission of the court.

POSTING.

1. In the list of cases posted for hearing, the number of each case, the names of the parties, and also those of their pleaders, if any, are to be specified.

2. Suits and petitions are to be brought on for hearing according to their order on the file, and eight clear days are always to be allowed between the date of posting and the date of hearing.

3. Where any matter has been once heard by an appellate court, and explanation has been called for, the return of the lower court is first to be communicated to the Pleaders, if any, and the case or petition is then to be reposted for a further hearing.

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PRINCIPAL SUDR AMINS.

1. A principal sudr amin has no power to receive or determine any appeal from the decision of a collector or other European officer of Government, but he may entertain a suit in which such officer is a party. (Sudr Pro. 14th December 1849.)

2. Principal sudr amins with criminal powers are required to pass not less than 30 decrees, principal sudr amins without criminal powers not less than 50 decrees on the merits during the month, including *ex-parte* cases, but exclusive of all others. In cases where no appeal lies two decrees will only be equivalent to one out of the number required, to be passed. (Sudr Pro., 17th September 1860.)

PRINTING CHARGES.

1. Every memorandum of appeal presented to the High Court must be accompanied by the charge for printing at the rate of eight annas per roll of all papers usually printed, or which the party may specially wish to be printed. (H. C. Order, 7th April 1866.)

PROCESSES.

1. Summonses to witnesses not being parties in a case, may ordinarily be signed not by the judge but by the chief ministerial officer of the court, but the words "By order of Court" should invariably precede such signature. Judges must be very careful to sign *all* processes, to which their signature by law is necessary. (H. C. Pro., 19th June 1866.)

2. The notice issued under Section 345 of the Code is to the respondent only; appellants are required to take notice of all orders of the court fixing dates for the hearing or adjourned hearing of appeals, without being served with any special notice. (Sudr Pro., 20th September 1860.)

3. Where a suit is instituted in a district munsif's court against the Government, the summons should be served under Section 52 of the Code on the Government pleader of the civil court. (Sudr Pro., 17th January 1860.)

4. When a civil court shall determine to send for, under Section 138 of the Code of Civil Procedure, from any public office or any court, any document or official paper, it shall issue a summons. When public or official documents from any court or public office are produced at the hearing of the suit by an officer deputed for that purpose, the said documents shall be inspected in open court, and, unless required as exhibits in the suit before the court, or retained for the presiding judge's personal inspection, shall be returned to the officer producing them. When such documents are retained, a receipt containing a descriptive list of the documents shall be given to the officer producing them, and a duplicate of the receipt placed with the documents. Any apparent erasure or alteration in any documents shall be noted in the said list. The said documents shall, as long as they remain in the custody of the court which required their production, be kept in a sealed packet properly labelled, and this packet shall not be opened except in the presence of the presiding judge. The appellate court shall observe the same rules as regards public documents connected with the appeals coming before them, and it shall be their duty to see that the lower courts observe the instructions herein conveyed. When official papers are transmitted from any court or office by post, the packet shall be opened in the presence of the presiding judge, and the papers compared with the list accompanying. The instructions

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conveyed in Rules 3 and 4 shall then be observed. Whenever it shall appear that any public documents received from any court or office are no longer required, the said documents shall be returned in a sealed packet to the court or office whence they came. (H. C. Pro., 1,260 of the 11th July 1870.)

When a collector is summoned to produce documents under Section 149 of the Code of Civil Procedure, Section 153 authorizes him to depute a subordinate for that purpose, and that subordinate may properly refuse to deliver the said documents, except into the hands of the presiding judge. When public records are sent for under Section 138, and are transmitted by post, they should in all cases be enclosed in a sealed packet and accompanied by a descriptive list, in which any apparent alteration or erasures in the documents should be noted. (Mad. Govt. Order, No. 10, of the 6th January 1871, and Pro. of the H. C., No. 71 of 16th idem.)

5. When the evidence of any person in the service of Government is required in any suit, the court should be guided as in the case of other witnesses by the provisions of the Code of Civil Procedure. In fixing the time for attendance of a public officer as a witness, or in granting the indulgence of an adjournment for that purpose, the fullest consideration must be given to exigencies of the public duties of the officer summoned. (H. C. Pro., No. 2,154 of 28th November 1870.)

☞ Though a district munsiff ought *not* to be summoned to depose as to what took place before him in the course of a trial, as he is entitled to exemption (H. C. Pro., 27th Nov. 1871. VI, H. C. Rep., App. 42); yet a magistrate is not exempted and he can be summoned as a witness. (III, H. C. Rep. 372, and H. C. Pro., 15th March 1872.)

6. Notice of the day fixed for the hearing of the appeal should, under Section 345 of the Code, be affixed in the Appellate Court as soon as possible after the appeal is registered and while the appellant may be presumed to be still in Court, the date being fixed according to the state of the file and the hearing being afterwards adjourned, if necessary, to a subsequent date. (Sudr Pro., 20th September 1860.)

7. Notices to respondents should always be issued immediately upon an appeal being registered, and in cases where the Government has undertaken the defence of the suit in the Court of First Instance, sufficient time should be allowed to enable the collector to obtain the instructions of the Board of Revenue and Government as to appearing and defending the appeal. (Sudr Pro., 7th December 1860.)

8. In suits against the Government, not less than three months should be allowed between the date of the summons and that fixed for the hearing. (Sudr Pro., 10th September 1861.)

9. Where it may be necessary to serve a summons on a party residing in any Foreign territory, a sufficient period must be allowed for the appearance of such party. (Sudr Pro., 6th April 1857.)

10 Notices issued to respondents under Section 345 of the Code are to be served through the Court of First Instance. (Sudr Pro., 17th August 1860.)

11. The serving officer is to be provided with a separate copy of the summons for each of the witnesses. (Sudr Pro, 17th January 1860.)

12. As a general rule, no attestation should be required, but it will be in the discretion of the Court in any particular case to require it, as, for example, where a second summons has to be issued under Section 112 in consequence of there being no satisfactory proof of the first having been duly served.

13. Where it is alleged that the defendant has refused to sign the

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acknowledgment, the due service of the summons may be proved by the deposition of the serving officer.

14. The evidence of the serving officer, if clear and positive, will generally be sufficient proof of service to justify the Court in proceeding to hear the suit *ex-parte*, under Section 111 of the Code; but where it may leave a doubt on the mind of the Court whether the service was really effected, the Court may direct a second summons to be issued under the following Section. (Sudr Pro., 19th March 1860.)

15. The charge on account of postage and for service of notices connected with Appeals or Miscellaneous Petitions in the High Court will be levied at the following rates:—

	Rs.	A.	P.
If only one Respondent	2	0	0
If two Respondents	2	8	0
If three do	3	0	0
If four do	3	4	0
If five do	3	8	0

and ½ Rupee additional for every succeeding Respondent up to 19. The charge for 19 Respondents will be 7 Rupees and no additional charge will ordinarily be levied for any Respondent after the nineteenth. The above sums must be paid into Court at the time appeal is presented, but nothing in this order is to prevent the Registrar (subject to an appeal to the Court) from requiring the payment of a larger sum if any particular case in which unusual charges may have to be incurred. (H. C. Pro., 5th March 1867.)

16. Processes requiring to be executed within another jurisdiction under Sections 59 and 158 of the Code, are to be forwarded by post at the expense of the parties on whose motion they are issued; but no such process is to be issued until the party provides the requisite amount both for its transmission and return, in addition to the regulated charge for serving the process. (Sudr Pro., 25th February 1860.)

17. Batta for service of process must in like manner be deposited by appellants, and in cases where the respondent is residing within the jurisdiction of another Civil Court, the charge for transmission should be levied from the appellant in addition to the Batta for serving the notice. (Sudr Pro., 18th December 1861.)

18. Where judicial processes may be sent to the Sheriff of Madras for execution, the sum of two Rupees is to be levied from the party at whose instance the process is issued, for every Summons, Notice or Proclamation, and four Rupees for every Warrant of Arrest or Execution, and the sums so levied are to be credited to Government. (Sudr Pro., 19th September 1853.)

19. A bill must be submitted to the High Court at the end of each month for the amount payable for notices served during the month. (H. C. Pro., 7th April 1866.)

20. Remittances on account of processes from one District to another are to be made by transfer receipts and not by postage stamps. As a rule, accounts can be adjusted monthly. (H. C. Pro., 12th November and 7th December 1868.)

21. Judical processes, other than warrants of arrest, requiring to be served within the limits of the Original Side of the High Court are, in addition to the certified translation in English, to be accompanied by copies of the process and translation for each person upon whom service is to be effected. (Sudr Pro., 5th October 1850.)

22. Warrants of Arrest are not to be sent by post, but entrusted to the officer into whose custody the person to be arrested is to be delivered by the Deputy Sheriff. (Sudr Pro., 14th June 1841.)

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23. Processes issuing from the Civil Courts of Calicut, Coimbatore, Cuddalore, Madura, Nagapatam, Tanjore, Tillicherry, Tinnevelly, and Trichinopoly, and requiring to be served on parties residing in Ceylon, may be transmitted (accompanied by English translations) direct to the District Judges in that Island, provided the parties be resident within the jurisdiction of the Colombo, Galle, Jaffna, Kandy, Kornegally or Trincomalle District Courts.

24. If any judical process has to be executed within the limits of a Military Cantonment, it should be accompanied by a letter to the Commanding Officer, explaining the nature of the process and requesting him to have it enforced.

25. District Munsifs may transmit processes direct to any Civil Court for service by that Court, and also to any other Court, without the intervention of the Civil Court. (Sudr Pro., 17th August 1860.)

26. Processes sent for service upon parties residing within their jurisdiction by the Sheriff of Madras or by the Mysore Courts must be served and returned direct. (H. C. Pro., 14th June 1864 and 21st July 1868.)

27. Section 168 of the Civil Procedure requires that there should appear to the Court to be satisfactory ground for believing that the default on the part of the witnesses summoned to give evidence is without lawful excuse before issuing a warrant for the arrest of such witnesses. But it is not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. (V., H. C. Rep., 104.)

28. Civil Court has no power to bind witnesses by recognizances to attend to give evidence on a future day. A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. Fresh summons for attendance on a future day may be issued and served on the witnesses in attendance before they leave the Court House. (V, H. C. Rep., 132.)

29. Arrest under Civil Process of a Mofussil Court on a Sunday is legal in this country. (H. C. Pro. 30th July 1869; IV. H. C. Rep., App. 62.)

RECEIPTS AND DISBURSEMENTS.

1. As the office of Shroff has been abolished, money payments will no longer be received in the Courts, but in lieu thereof receipts from the nearest Revenue Treasury signed by the Treasury officer must be produced and filed as vouchers for the payments. The forms prescribed in the proceedings of the High Court dated 28th August 1868, must be followed in sending remittances to or withdrawing monies from the Treasury.

2. Deposits for the service of processes will be received by the Nazir in the Civil Courts, the Courts of Small Causes and the Courts of the Principal Sudr Amins, and by the Head Gumastah in the Courts of District Munsifs.

3. No suitor is to be allowed to make a general deposit of money in advance for the service of all processes that may be issued in the suit: the cost of each process is to be paid only at the time of its being ordered to be issued.

4. The Nazir or Head Gumastah is responsible that the proper disbursements are made to the serving officers. They are not to keep in hand more than ten Rupees. When more than this is required to be disbursed, a cheque must be drawn on the Treasury.

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5. If any surplus accumulates from the monies collected for the service of processes, the amount will be credited annually to Government before the end of the official year and an account thereof submitted to the High Court. (Sudr Pro., 16th August 1860, and H. C. Pro., 8th July and 28th August 1868.)

6. On the Sheristadar will devolve the duty of drawing the salaries of the ministerial Officers of the Court establishment and distributing the same.

RECORDS OF SUITS.

1. The several papers on the record of a Suit are to be endorsed according to their contents, every paper having at the head of endorsement the number of the Suit to which it belongs, *e. g.*, "O. S., No. 1 of 1860, Plaint." "O. S., No. 1 of 1860, Summons to Defendant." "O. S. No. 1 of 1860, Defendant's Written Statement," &c. (Sudr Pro., 8th December 1860.)

2. In addition to the above particulars, the plaint is to have endorsed upon it the names of the plaintiff and first defendant and of the Pleaders of the parties, with a note showing the number of documents, if any, produced with the plaint.

3. If any of the parties die, the numbers attached to their names are nevertheless to be continued, and the names of their legal representatives are to be numbered consecutively to those of the original parties. (Sudr Pro., 8th December 1860.)

4. Where fresh parties are brought in, they are to be numbered consecutively to the Plaintiff or Defendants, as the case may be already in the suit. (Sudr Pro., 8th December 1860.)

5. The witnesses called by the plaintiff or defendant are to be numbered consecutively; and where there are several plaintiffs, or defendants, the witnesses called by each are not to be numbered separately, but continuously, as if, all had been called by a single plaintiff or defendant. (Sudr Pro., 8th December 1860.)

6. When the papers in any suit or proceeding are sent for deposit among the Court's records, the record keeper is immediately to compare them with the list appertaining thereto, and will be held answerable for any papers, the absence of which he may not then bring to the notice of the Judge.

7. If such papers shall have been received from another Court the seal of the packet is not to be broken till the record-keeper is prepared to examine its contents.

8. The following are the rules prescribed for the destruction of judical Civil records C:—

(*a.*) Every judgment and decree in a Civil suit, both those of the Court of First Instance and those of the Appellate Court, must always be preserved.

(*b.*) Except these documents and such as for special reasons the Judge may deem it advisable to retain, all records are to be destroyed after three years.

(*c.*) The period for which records are to be kept will run in Civil cases from the final disposal of the suit by the Original or Appellate Court as the case may be.

(*d.*) Exhibits filed by the parties to a suit will be destroyed with other records after three years. Application should therefore be made within that period for any document of value that the parties may wish to receive back. (H. C. Pro., 18th February 1865.)

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9. The above rules refer to records of particular suits and do not sanction the destruction of Registers of suits or any documents of a similar nature. (H. C. Pro., 4th February 1867.)

10. The Records of the Miscellaneous Proceedings held in the Munsif's Court should be forwarded monthly to Civil Court, and that they shou'd be there dealt with under the rules for the destruction of Records. The destruction of Records in the Munsif's Courts should on no account be permitted. (H. C. Pro., No. 2,021 of the 11th November 1870.)

REFERENCES.

1. In making references to the High Court, the Civil Judge should state whether any and what circumstances have arisen to call for an expression of the Court's opinion, and his own view of the question, referred. (Sudr Pro., 23rd May and 12th August 1861.)

2. All references from subordinate judicial officers are to be made to the Civil Judge by whom the questions raised are to be submitted to the High Court for determination, accompanied by the Civil Judge's opinion. (Sudr Pro., 11th December 1824.)

3. In such cases the Civil Judge is not to communicate his own opinion for the guidance of the subordinate judicial officer making the reference, but to wait the Court's decision of the question. (Sudr Pro., 11th December 1824.)

4. No opinion will be given by the Judges of the High Court on any question which may afterwards come judicially before them in appeal; but reference on mere points of practice will be answered, in order that such points may be authoritatively settled and the practice of the Courts rendered uniform. (Sudr Letter, 27th September 1861.)

5. The Civil Judge has no power to refer appeals under Act VIII of 1865 to a Principal Sudr Amin for disposal.

The power of a Civil Judge to transfer appeals to a Principal Sudr Amin is confined by Clause 3, Section 8 of Act VII of 1843 to appeals from District Munsifs. (IV, H. C. Rep., 227.)

REGISTRATION.

☞ The Rules (relating to the transmission of memoranda of Decrees and orders relating to the immovable property to the District Registrar) have been virtually cancelled under the new Registration Act VIII of 1871, whereby it is left to the option of the parties to register the copies of the Decrees and Orders of the Courts. (See Clause 7 of Section 18, and Sections 23, 29 and 50, Act VIII of 1871.) P. T.

1. A registered deed of sale, though subsequent in date, invalidates as against the registered purchaser a prior deed of sale unregistered, notwithstanding that notice of the prior deed be alleged. (III, H. C. Rep., 89.)

2. Plantiff sued for possession of land under an unregistered deed of sale. 4th defendant claimed the same land under a deed of subsequent date, registered after the commencement of the suit. The latter deed was found to be fraudulently got up between the defendants.

Held, that the registration of such a document does not give it the effect of invalidating a former unregistered deed of sale.

The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court" were introduced in order to prevent any supposition that registration would give to a merely

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fictitious transaction any effect which it would not otherwise possess. (III, H. C. Rep., 270.)

☞ See Sections 47, 48, 49 and 50, Act VIII of 1871.

3. A sued for a house said to have been sold by B under a registered deed of sale dated 4th October 1867. B admitted the deed but pleaded that he received no consideration. C denied A's claim and said that he is in possession of the house under a deed of sale dated 13th February 1863 which was not registered. *Held*, as Act XIX of 1843 is repealed, and the new Registration Act VIII of 1871 contains no provision for the priority of registered deeds over any other, save in the cases of optional registration, the ordinary rule applies that the prior conveyance must prevail. (VI, H. C. Rep. 391.)

4. A sued to recover immovable property under a registered deed of sale given by B on the 23rd July 1868. C pleaded a sale to him by B on the 23rd March 1867, stating that B after receiving full consideration, had improperly refused to have his deed of sale registered. S. 49, Act XX of 1866 precluded the reception in evidence of C's unregistered deed; but the lower courts held that certain admissions made by B in an enquiry held before the Registrar were admissible in evidence to prove the sale to C and dismissed A's suit. *Held*, that the admissions made by B were evidence against A as made by one from whom A derived his title, but the Registration Act precluded any effect being given to the sale evidenced by such admissions; there being a writing the sale could not be proved by mere oral evidence. The term "instrument" in S 49 is used on the understanding that the writing is not merely evidence of transaction but is the transaction itself. (VII, H. C. Rep. 13.)

5. A hypothecated land to B by a registered bond, and subsequently paid the debt and received back the bond, with an endorsement made on it by B acknowledging the receipt of the amount, and relinquishing the right of lien. *Held*, that though the endorsement was not registered, yet it was admissible in evidence, as its reception not being precluded by Act XX of 1866. (VII, H. C. Rep. 1.)

6. Plaintiff was held entitled to enforce an unregistered instrument creating a lien upon land in 1861, against a subsequent purchaser in 1866, for value without notice whose deed of sale was registered. S. 2 Act XIX of 1843. (IV, H. C. Rep. 434; V, Ibid 457.)

7. In a suit upon a razeenama, the execution of which was admitted by the defendant which purported to create an interest in immovable property, but was not registered in accordance with S. 13, Act XVI of 1864. *Held*, that the existence of the agreement not having been disputed, its production was not necessary, and the plaintiff was entitled to whatever relief the effect of the plaint and answer taken together would entitle him on the admission of the defendant. (III. H. C. Rep. 342.)

8. In a suit upon an unregistered bond the registration of which was compulsory the defendant admitted the execution, but pleaded no consideration. *Held*, that this was not a suit for money only; that the bond being unregistered could not be received in evidence, and that the defendant's admission of execution—not of contents—was not such an admission as to render it unnecessary to look at the bond. (S. A. No. 51 of 1869, V, Mad. Jurist 11.)

9. Sale certificates under S. 259 of the Civil Procedure Code, are instruments declaring an interest in property; and if the value is of one hundred rupees or upwards, the registration of the certificate is compulsory under S. 17, Act VIII of 1871. In issuing certificates, Courts will inform purchasers that unless the same are registered they will

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probably be held inadmissible as evidence of title. (H. C. Pro. No. 1805 of 18th November 1871.)

10. On the 1st August 1871, plaintiff sued, under S. 53, Act XX of 1866, praying for a decree under a specially registered bond of 20th July 1869. *Held*, that the effect of 1 and 4 cl. of S. 2. of Act VIII of 1871, read with the provision in 1st Schedule of Act VII of 1870, is to keep in force all the provisions of Act XX of 1866, relating to the procedure for the recovery in a summary way of the amount of an obligation under S. 52 of that Act before 1st July 1871. Consequently that the stamp duty leviable upon the petition is one-fourth the value prescribed for a plaint in such a suit. (VI, H. C. Rep. 351.)

11. Upon case referred, *Held* by the majority of the Court (Holloway and Collett, JJ. dissenting) that Section 53 of the Indian Registration Act XX of 1866 does not apply to a case where the decree is sought against the alleged personal representatives of a deceased obligor. Reliance is placed upon the special registration as a substitute for any investigation by the Court, and when any question arises as to matter subsequent to the registration, the summary remedy fails. It can only apply to cases in which the parties to the registration will also be the parties to the decree. (III, H. C. Rep., 199.)

12. The summary remedy under Section 53 of Act XX of 1866, cannot be enforced by the representative of an obligee. (IV, H. C. Rep., 233.)

☞ The law of Special Registration and of the summary remedy is cancelled by Act VIII of 1871. (P. T.)

13. A bond contained a stipulation that the amount should be paid in three instalments, and that in default of payment of any one instalment the whole amount should become due immediately. *Held*, that the summary remedy under Section 53, Act XX of 1866 was not available to recover the whole amount of the bond. (VI, H. C. Rep. 4.)

14. *Held*, per Bittleston, Innes and Collett, JJJ., that an instrument operating to create an interest in immovable property, and as such requiring to be registered under Section 17 of Act XX of 1866, was not admissible in evidence in a suit to enforce the personal obligation only.

Per Scotland, C.J., that an instrument which has the two-fold operation of a simple contract or bond to pay a debt, and a collateral mortgage security for the debt is admissible in evidence for the purpose of proving the simple contract-debt. (IV, H. C. Rep., 378.)

☞ But Section 49, Act VIII of 1871, provides that documents required to be registered under Section 17 shall not affect any immovable property comprised therein, nor be received as evidence of any transaction affecting such property, unless it is registered. (P. T.)

15. Where an instrument, the registration of which was rendered compulsory by Section 17, Act XX of 1866, was accidentally destroyed by fire soon after its execution and before registration. *Held*, in a suit to compel the defendant to execute another instrument to the same effect as that which had been destroyed, that the secondary evidence of the contents of the unregistered instrument was admissible; and that the plaintiff was entitled to the relief prayed for. (V, H. C. Rep., 123.)

16. A sued B for rent due upon a *Muchalika* executed by B. *Muchalika* was not registered. *Held*, that A could not establish his case without putting *Muchalika* in evidence, and it was inadmissible not having been registered; although B admitted that he cultivated the land. (V, H. C. Rep., 45.)

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REPRESENTATIVES.

1. While the obligor still is alive, though he be absent abroad, a suit will not lie against the representative. (IV, H. C. Rep. 1.)

2. In a suit against the representative of a deceased obligor, the plaintiff is entitled to a decree for payment by the defendant of the amount of the bond out of any property which passed to him as an heir to his father; the plaintiff in execution of the decree, being at liberty to proceed in respect of the immovable property, if there should be no movable property left, or if it should prove insufficient when sold to satisfy the decree. (II, Ibid 336: 423.)

3. In a suit against an heir for debts of his ancestor, in the absence of special circumstances it lies upon the plaintiff in the first instance to give such evidence as would *prima facie* afford reasonable ground for an inference that assets had or ought to have come to the hands of the defendant, plaintiff having laid this foundation for his case, it then lies upon the defendant to show that the amount of such assets is not sufficient to satisfy the plaintiff's claim, or that he was not entitled to be satisfied out of them, or that there were no assets, or that they had been disposed of in satisfaction of other claims. (III, H. C. Rep. 161.)

RES JUDICATA.

1. To conclude a plaintiff by a plea of "res judicata," it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. (III, H. C. Rep., 84.)

2. The force of *res judicata* attaches not only to the bare condemnation or discharge of a defendant, but to all the objective grounds distinctly found by the Judge as the basis of his decision. (III, H. C. Rep., 272)

3. An estoppel in pais need not be pleaded in order to make it obligatory. With the Indian system of pleading, a party's statement in a judicial proceeding cannot be excluded like allegations in bills in equity and pleadings at common law.

But mere statements for the purpose of a particular judicial proceeding can only be conclusive evidence in another proceeding as to such material facts embodied therein as must have been found affirmatively to warrant the judgment of the Court upon the issues joined. They are then conclusive between the same parties, not because they are the statements of those parties: but because for all purpose of present and prospective litigation they must be taken as truth. (II, H. C. Rep., 31.)

☞ Estoppels are divided into three classes: 1, by matter of record; 2, by deed; 3, in pais. The third class will be found in chapter VIII. (Act I of 1872, P.T.)

4. The rule which makes a judgment conclusive against parties and those who claim under them is subject to certain exceptions which are the offspring of positive law, and the reason for the exception may be generally stated to be that the nature of the proceedings by which there is a fictitious though not unjust extension of parties renders it proper to use the judgment against those not formally parties.

The rule as to judgments in rem in some particular cases results from the nature of the proceedings and before attempting to apply the rule in this country, consideration should be given to the question whether

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there are Courts so proceeding as warrant the application of the doctrine of decrees in rem. (II, H. C. Rep., 276.)

5. The plaintiffs, mirassidars of a village held on pangavaly tenure, sued their co-mirassidars the owners of the remaining shares, and others, occupants of land in the village, for a partition of the common lands of the village and an allotment to the plaintiffs of specific parts thereof proportionate to the shares which they represent.

In a former suit to which all the present mirassidars were parties, either actually or as privies to those through whom they claim, it was decided that no right existed in any individual share-holder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares.

Held, that the former decree declaring the impartibility of the common lands of the village was conclusive in the present suit between the present shareholder upon the same question of right. (IV, H. C. Rep., 285.)

6. A and B carried on joint trade from 23rd March 1864 to 18th July 1866, since when the trade was discontinued. In the meantime B adjusted the accounts, and paid a small amount towards a balance found due to A; but having failed to pay the remainder, A sued B. The Munsiff passed a decree which the Civil Judge reversed, observing that as the suit had been brought for the recovery of the amount advanced by A to B for joint trade, instead of for an adjustment of accounts of the joint trade, A had no cause of action. A sued B again for an adjustment of partnership account, and the Munsiff decreed for A. In appeal the Principal Sudr Ameen reversed the decree, holding that the suit was barred by S 2, of the Civil Procedure. *Held*, reversing the decree of the Principal Sudr Ameen that the previous suit was not a bar to the second suit. (S. A. 23 of 1872; 8th April 1872. VII, *Madras Jurist*, 377.)

☞ See Sections 40, 41, 42, 43, and 44 (Act 1 of 1872, P.T.)

RETURNS.

1. It is the duty of Civil Judges to review the operations of the inferior tribunals and record their observations thereon in the form of Proceedings. These Proceedings should accompany the Quarterly Statements submitted to the High Court. (Sudr Pro., 31st March 1859.)

2. The new Forms of yearly Statements are nine in number, and of which the eighth and ninth are Criminal and the rest Civil, viz., I, Statement shewing the various Judicial Tribunals, Original and Appellate, existing in the Presidency; II, Statement shewing the number and nature of Civil Suits instituted in the several Courts; III, Statement shewing the value of Suits disposed of in the Civil and Revenue Courts; IV, Statement shewing the general result of the trial of the Civil Suits of Original Jurisdiction; V, Statement shewing the business of the Appellate Courts; VI, Statement shewing the execution of the Decrees of the Civil and Revenue Courts; and VII, Statement shewing the number of Suits, Original and Appeal pending, classified according to the years in which they were instituted.

3. Form B exhibiting the proceedings taken by all Civil Courts under the provisions of the Code of Criminal Procedure should be submitted monthly to the District Superintendent of Police. (H. C. Letter No. 61 of 16th January 1872; and No. 1016 of 1st June 1872.)

4. The following form of new Quarterly Statement is prescribed by High Court Letter No. 980 of 25th May 1872.

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Quarterly Return of Original and Appeal

Courts.	Plaints not yet registered.	Suits on the file.				Trial and disposal of Suits.										Pending.				Average number of days intervening in suits decreed on merits between.			
						Uncontested.						Contested.											
	Number.	Number of days since presentation of the oldest.	Pending.	Instituted.	Remanded readmitted received by transfer or called up.	Total.	Dismissed for default.	Withdrawn with leave.	Compromised or decided by arbitration.	Decree on confession.	Referred or remanded.	For plaintiff.	For defendant.	For plaintiff	For defendant.	For plaintiff	For defendant.	Total disposed of.	More than 1 year.	More than 6 months.	Less than 6 months.	Total.	Number of days since filing of the oldest suit.	Filing plaint and issuing summons.	Issuing summons and first hearing.	First hearing and settlement of issues.	Settlement of issues, and final hearing.	Final hearing and Judgment.	Filing of plaint and Judgment allowing average duration on the file.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Civil Judge. O. S. / A. S.																													
Principal Sudr Ameen. O. S. / A. S.																													
District Moonsiff of——																													

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Suits for the —— Quarter of 187 .

Under Act XI of 1865 and Madras Act IV. of 1863.												Execution of Decrees including Small Causes.									Petitions including Small Causes.						
Received.			Decreed on Merits.			Pending.										Pending.			Decrees.					Pending.			
Pending.	Filed.	Total.	Ex-parte cases.	Contested case.	Otherwise disposed of.	Total disposed of.	More than 3 months.	More than 1 month.	Less than 1 month.	Total.	Number of sittings.	Average number of decrees on merits at each sitting.	Courts	Pending.	Filed.	Total.	Disposed of	More than 3 months.	Less than 3 months.	Average interval between application and final execution.	Completely executed.	Partially executed.	Pending.	Filed.	Total.	Disposed of	More than 2 months.	Less than 2 months.	Average of interval between filing and disposal.
31	32	33	34	35	36	37	38	39	40	41	42	43	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
													Civil P.S.A. D. M.															

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REVIEW OF JUDGMENT.

1. Every application for review should be heard on the next Court day, but one, after its presentation. If the applicant should then fail to satisfy the Court that there are sufficient grounds for a review, the application will be finally rejected. If the review desired appear to the Court to be necessary, a notice is on the same day to be issued at the applicant's expense to the other party, fixing a date on which he may appear and be heard in support of the decree, and a final order is to be passed on the date so fixed. (Sudr Pro., 6th September 1860.)

2. A person who does not appear when the case is before the Court on appeal, cannot be heard on petition for review of judgment, though his interests be for the first time prejudicially affected by the decree of the Court. (Sudr Pro., 24th December 1859.)

3. Where an application for review of judgment may have been heard and rejected, all subsequent applications from the same party will be refused.

4. The Courts may receive and file petitions for review of their *orders*, and may amend any evident error or omission therein, after notice to the other party.

5. A Judge having once passed an order on an application for execution of a decree, has not authority to re-investigate the case under Section 376 of the Code, and pass a second order directly opposed to the one first made. (Sudr Pro., 24th April 1861.)

6. A mere error in the table of costs may be rectified by the chief ministerial officer with the permission of the Court and forms no ground for review of judgment.

7. Where the error is one, the correction of which cannot affect the interests of either party, the Court which passed the decree may of its own motion review its judgment, without any application from the parties. (Sudr Pro., 29th March 1860.)

8. A Judge is merely authorized to correct errors or omissions arising from inadvertence or an oversight: no order can be *reversed* by the Judge by whom it was passed. (Sudr Pro., 24th April 1861.)

☞ See Stamps

SECURITY.

1. Security in the sum of 1,000 Rupees is to be taken from the Nazirs of the Civil Courts and the Courts of Small Causes, and the Principal Sudr Amins' Courts, and in the sum of 250 Rupees from the Head Gumastah of the District Munsifs' Courts. (Sudr Pro., 31st August 1860, and H. C. Pro., 16th November 1868.)

2. Any party required to furnish security may make in lieu of such security a deposit of money, or of promissory notes or other obligations of Government. (Sudr Pro., 29th January 1805.)

3. The competency of a surety, not within the Court's jurisdiction, may be ascertained by reference to the Court within whose jurisdiction he may be residing; and, if certified to be good, the security ought to be accepted. (Sudr Pro., 26th November 1844.)

SIGNATURE.

When the law does not require the Judge's signature, a stamp with his name or initials may be used in his presence in lieu of his signature; but the Judge should sign the Diary. (H. C. Pro., 16th July 1862.)

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SET-OFF.

1. The right of set-off will be found to exist not only in cases of mutual debts and credits, but also where cross demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit. (II, H. C. Rep., 296, and IV H. C. Rep., 120.)

SMALL CAUSE COURTS.

1. Except as otherwise provided, Judges of Small Cause Courts and, Civil Judges, Principal Sudr Amins and District Munsifs acting as Judges of Small Cause Courts, under (Madras) Act IV of 1863 shall be guided in the trial of suits by the Code of Civil Procedure and shall use the same forms of processes, keep the same Registers of suits, and follow the same system of accounts as other Civil Courts.

2. Separate Registers of suits must be kept by District Munsifs, &c. acting under (Madras) Act IV of 1863, distinct from the Registers of ordinary suits, and the rules laid down for Judges of Small Cause Courts must be followed.

3. Every Judge of a Small Cause Court shall, six weeks previous to his proceeding to another station, publish in the *District Gazette* a notice specifying the date appointed for holding his Court at such station.

4. Every Judge of a Small Cause Court visiting an out-station shall report to the High Court the date of his arrival at and departue from such station.

5. Any plaint may be received at the station where the Judge may at the time be holding a Court, but the parties should be directed to appear and the suit should be heard at the station nearest their place of residence.

6. A Court will be held by District Munsifs every Monday and Thursday for the hearing of Small Causes.

7. At the time of entering the plaint, a note according to the Form No. 2 in the Schedule, shall be given to the plaintiff or his Pleader or recognized agent; and no money shall be paid out of Court to the plaintiff or his pleader or recognized agent, except on production of such note.

8. Where the defendant admits that he is liable to pay the debt and costs of the suit and pays the money into Court, the sum so paid shall include all necessary costs up to that time incurred by the plaintiff.

9. When the defence is a tender, such defence shall not avail unless before or at the hearing of the suit, the defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

10. When a defendant is desirous to set-off any debt or demand alleged to be due to him from the plaintiff, he shall produce the particulars of such set-off in writing, at the time of his appearing to answer.

11. Where a party sues or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, and also in cases where a party sues or is sued in his own right, and it appears at the hearing that he should have sued or been sued in a respresentative character, the Judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the suit shall then proceed in all respects as to set-off and the other matter, as if the proper description of the party had been given in the summons.

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12. Claims by husbands, in their own right, may be joined with claims in respect of which the wife must be joined as a party.

13. In suits by or against a husband, if the wife is improperly joined or omitted as party, the summons may, at the hearing, be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the suit may proceed as to set-off and other matters as if the proper persons had been made a party to the suit.

14. Where a married woman is sued singly, and she obtains judgment on the ground of non-liability, proceedings may be taken thereon in the name of the wife, at the instance of the husband.

15. When the name or description of a plaintiff in the summons is insufficient or incorrect, it may, at the hearing, be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the suit may then proceed as to set-off and the other matters, as if the name or description had been originally such as it appears, after the amendment has been made.

16. Where the name or description of a defendant in the summons is insufficient or incorrect and the defendant appear and object to the description, it may be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the suit may proceed as to set-off and other matters as if the name or description had been originally such as it appears after the amendment has been made; but if no such objection is taken, the suit may proceed and in the judgment and all subsequent proceedings, founded thereon, the defendant shall be described in the same manner.

17. When a person other than the defendant appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consent, and thereupon the suit shall proceed as if such person had been originally named in the summons, and if necessary, the hearing may be adjourned, on such terms as the Judge shall think fit, and the costs of the person originally named as defendant shall be in the discretion of the Judge.

18. No mis-nomer or mis-statement of the cause of action shall vitiate the summons, and the Judge may, in his discretion, rectify such mis-nomer or mis-statement as soon as discovered and alter the record accordingly; and if the defendant or one of the defendants be present in Court at the time of such discovery, the hearing shall proceed as if no such amendment had occurred, but in the absence of the defendant a fresh summons shall issue.

19. The officer in attendance on the court will each morning take charge of the papers relating to each case, including the plaint, summons to defendant, summons to witnesses, and any documents which may have been deposited in court by the parties to the suit, and shall keep each set of papers in a distinct bundle, placed in the order in which the cases are set down for hearing, so that he may without delay be able to furnish the court with any document which may be required.

20. A daily list shall be prepared of the cases set down for hearing, and such list shall exhibit the number of each case, with the names of the parties. The court officer shall indicate each case in its regular order on the file and shall call the parties three times in an audible voice.

21. A duplicate list of the cases to be heard during the day shall be affixed in some convenient and conspicuous part of the court, for the information of the parties.

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22. If a pleader desire to appear for a party, he shall previously obtain the leave of the court.

23. No officer of the court, and no partner or Gumastah of such officer, shall act in any way as a pleader or recognized agent on account of suitors; nor shall any such officer, or his partner or Gumastah, nor shall any pleader of the court, become surety in any case where security is required.

24. It will be in the discretion of the judge to allow the pleaders of the local courts to appear in suits to be heard at their stations, or to admit a certain number of practitioners exclusively for his own court upon such terms as to qualifications as he may consider expedient.

25. In adjudicating upon costs between party and party, no fees shall be allowed unless the judge shall certify at the time of the trial, that the case was a proper one for the employment of a regularly authorized pleader. When allowed, rupees 5 shall be the fee recoverable by the party employing such pleader, and no fee shall be allowed for the assistance of any other person. If an advocate instructed by an attorney, or if a Vakil of the High Court shall appear, the fees as aforesaid shall be rupees 15 and rupees 10 respectively in cases where the judge certifies as above.

26. Where a pleader is employed merely to obtain execution of a decree, one rupee shall be allowed as costs for that purpose in claims below rupees 100, and two rupees in claims above that amount.

27. In cases where the parties desire that the matters in difference between them shall be referred to arbitration and shall agree upon the arbitrator or arbitrators, the court may issue the order No. 7 in the Schedule under seal of the court, and shall pronounce judgment upon the award delivered under the said arbitration order.

28. The decisions of the judge shall be recorded in the same form as that prescribed in Section 189 of the code of civil procedure for decrees, omitting the particulars of the claim; and no judgment, such as is required by sections 184 to 187 need be written.

29. Copies of decrees will be given to the parties on their producing the stamps under Act VII of 1870. (H. C. Pro., 20th April 1871, No. 793.)

30. The time for issuing warrant on any decree or order shall be one week after the making thereof, unless immediate execution shall have been ordered by the court.

31. When money has been paid by any party under any execution or order, if notice be given by such party of his intention to apply to the court to set aside the execution or order under which the money shall have been paid or to grant a new trial, the same shall be retained until such application shall have been disposed of by the court.

32. Before granting the copy of the judgment and the certificate required for enforcing any portion of a judgment by execution against the debtor's immovable property, a Small Cause Court should be satisfied that such movable property of the debtor as is within its jurisdiction has been sold in execution. (I, H. C. Rep., 491.)

33. If application be made for a new trial, immediate notice of the same shall be given to the other party according to form No. 10 in the schedule.

34. The admissibility of a document in evidence is a question of law, upon which the judge, if he entertains any reasonable doubt, may state a case for the opinion of the High Court.

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35. Cases referred for the opinion of the High Court are to be stated according to Form No. 15 in the Schedule ; and all such cases will be heard fifteen days after receipt of the reference.

36 The Head Clerk will be responsible for the accuracy of the accounts.

37. A book shall be kept in each Court for the entry of all interlocutory orders, which shall be entered each day in the Record.

38. The Records shall be bound in books of a convenient size and kept with due care by the Head Clerk. In case any amendment of the record is found necessary, it shall be made under the direction of the Judge and shall be attested by his initials.

39. The Head Clerk shall keep a separate book in which shall be entered the cases which may be referred for the opinion of the High Court.

40. The execution of processes shall be conducted in the manner prescribed by the rules of practice (Civil) under the heads of "Batta Establishment" and "processes," and the charge shall be the same.

41. Unless an officer styled the "Clerk of the Court" be hereafter appointed, every summons, warrant or other process must be issued under the signature of the judge and the seal of the court.

42 No summons, notice or order, or any execution on a judgment or any other process whatsoever, shall be served or executed on Sunday, Christmas day or Good Friday ; but such days shall be counted in the computation of any time to which the parties may be limited, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

43. No process of any kind shall be set aside for irregularity ; but every such process shall be amenable and amended at the discretion of the court, upon payment of such costs, if any, as the court may direct.

44. Every summons to a defendant shall be made returnable in one month unless otherwise ordered, and shall be served a sufficient time before the day of hearing to allow of seven days for preparation and twenty-four hours for every fifteen miles that the defendant will have to travel.

45. Every summons to a witness shall be served a sufficient time before the day of hearing to allow of not less than three days for preparation and twenty-four hours for every fifteen miles the witness summoned will have to travel.

46. In the case of summons to witnesses, a sum of three annas is ordinarily to be levied from the party at whose instance the witness is summoned. for every day that will be occupied by him in travelling to and from the court, at the rate of fifteen miles a day, and for one day's attendance.

47. Every warrant for attachment and sale of movable property shall be returnable within one month, and the Batta Amin, if he shall not have executed such warrant, shall return the same to the Court at the expiration of that time.

48. Every Batta Peon shall furnish security in such sum as the Judge shall prescribe for the faithful discharge of his duties. (H. C. Rules, 8th January 1863.)

49. Small Cause Court has concurrent jurisdiction to try suits for

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sum not exceeding ten rupees, cognizable by village munsiffs under Section 5, Madras Regulation IV of 1816. (V, M. H. C. Rep., 45.)

50. Small Cause Court has no jurisdiction to try a suit for rent, where the defendant *bonâ fide* sets up by way of defence that the title of the land in respect of which the rent was claimed passed from plaintiff to others. (V, H. C. Rep., 84.)

51. The actual presence of the defendant within the jurisdiction of the court is not necessary if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient. (V, H. C. Rep., 101.)

52. A suit to establish the plaintiff's right to the exclusive possession of a personal property of which the plaintiff and her husband had been dispossessed by seizure in execution of a decree against the plaintiff's husband, is cognizable by a Small Cause Court. (V, H. C. Rep., 191.)

53. Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. (V, H. C. Rep., 200.)

54. Where the defendant entered into an agreement with the plaintiff (the widow of the defendant's brother) to give her every year a specified quantity of paddy by way of maintenance: *Held*, Small Cause Court had jurisdiction to entertain a suit for breach of agreement. (V, H. C. Rep., 432.)

55. Suit to recover the amount of revenue, which the plaintiff paid for defendant, is cognizable by a Court of Small Causes. (V, H. C. Rep., 462.)

56. A court which cannot attach property primarily on execution of its decree, cannot attach in anticipation of it. (VI, M. H. C. Rep., 91.)

57. European soldier doing duty as an Army Schoolmaster, not being liable to a Court of Requests, can be sued in Cantonment Small Cause Court. (VI, H. C. Rep., 83.)

58. The Small Cause Courts (established under Madras Act IV of 1863) are not subordinate to Civil and Sessions Courts. (H. C. Judgt. 3rd May 1871, in Criminal R. A. 116 of 1871, and VI H. C. Rep., 18. and 191.)

59. The following statement is to be published monthly in the District Gazette.

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Operations of Officers invested with final jurisdiction in Small Causes under Madras Act IV of 1863, during the month of _____ 187 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Court.	Received.			Disposed of.					Pending						
	Pending.	Instituted.	Total.	Decreed on merits. For Plaintiff.*	Decreed on merits. For Defendant.*	Dismissed for default.	Adjusted or withdrawn.	Otherwise disposed of.	Total.	More than three months.	More than two and less than three months.	More than one and less than two months.	Less than one month.	Total.	Number of sittings.	Average number of decrees on merits passed at each sitting.

*Number of Exparte-Cases.

A. B.

Date _____ 187 .

District Moonsif.

Small Cause Side.

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STAMPS.

1 The value of a stamp to be used for a memorandum of appeal is to be calculated upon the portion of the original claim disallowed by the lower court, if the appeal be by the plaintiff; or upon the amount adjudged by such court, if the appeal be by defendant. (Sudr Pro., 5th November 1829.)

2. The costs awarded by the lower court are not to be included in the amount upon which the value of the stamp for the memorandum of appeal is to be calculated. (Sudr Pro., 15th February 1828.)

3. When additional blank stamps are put in with any plaint, memorandum of appeal or petition, a memorandum is to be written by the party or his pleader on the face of each of such stamps, describing the petition, &c. to which it belongs, and the upper corners of such stamp papers on the right hand side are to be torn off by the chief ministerial officer immediately on their being received. (Sudr Pro., 24th March 1859.)

4. If a plaint be rejected under Sections 29, 31 or 32 of the Code, it is of no further use, and the stamp-duty cannot be refunded.

5. If a plaint be returned for amendment, no fresh stamp will be required for the amended plaint.

6. Certificates for refund of stamp-duty are to be prepared in the handwriting of the principal ministerial officer of the court, and such officer will be held responsible for any amount of which Government may be defrauded in consequence of any inaccuracy in such certificate. (Sudr Pro., 28th April 1867.) Five sorts of forms of certificates for refund of stamp-duty under Sections 13, 14 and 15 of Act VII of 1870 have been framed under H. C. Pro., 2287 of 13th December 1870.

7. Stamp paper used for judicial purposes must not be written upon both sides. (H. C. Pro., 20th November 1863.)

8. A co-owner of village lands sued to have them divided among the villagers according to a custom that at the end of every twelve years the lands should be re-distributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. *Held*, that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the shares in the village, and that the stamp on the plaint need only be proportioned to the value of the property actually sued for. (II, H. C. Rep., 1.)

9. The decision of the court of first instance as to the admissibility of a document subject to the payment of stamp-duty is final and cannot be reviewed by the appellate court. (II, H. C. Rep., 321.)

10. It is open to an appellate court to consider the question whether a document which the court of first instance has declared to be liable to a stamp under Act X of 1862 is properly so liable. (III, H. C. Rep., 1.)

11. A bond executed within the limits of a foreign state is not subject to the provisions of Act X of 1862. (Pro., H. C., 26th September 1862.)

12. Where the objection is taken for the first time in special appeal that a document which, according to Act X of 1862, ought to have been stamped has been admitted by both the lower courts unstamped, the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal) and to require payment of the stamp duty and penalty, or to reject the document. (III, H. C. Rep., 297.)

13. In cases where for the purpose of stamping it is impracticable to ascertain accurately what portion of permanent revenue has been

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assessed on the lands in dispute in a suit, the appellant should furnish to the registrar a memorandum giving an estimate of the market-value and the data on which it has been calculated. If the registrar considers the estimate clearly insufficient, the court will issue a commission to ascertain the proper market-value. (III, H. C. Rep., 352.)

14. Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiff cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract, the defendants admitted that a sum of Rupees 6,328-4-0 was due to the plaintiff subject to certain deductions, which they claimed to be entitled to set off against the plaintiff's claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of Rupees 5,000. *Held*, that notwithstanding the admission of the defendants, the plaintiff could only recover Rupees 5,000 in the suit. (IV, H. C. Rep., 120.)

15. Sheets added to plaints or memoranda of appeals require no stamp. (H. C. Pro., No. 839 of 28th April 1870.)

The following abstract of authoritative constructions of the points connected with the Court Fees' Act, (VII of 1870) was circulated by the High Court on the 6th May 1871, No. 892 :—

Section 6.—*Q.* Whether an appeal should be valued under Act VII of 1870, when the original suit appealed from was valued under Act XXVI of 1867.

A. *Held*, that the valuation of an appeal must be according to the Act in force at the time of its presentation, and that the original valuation under a law obsolete at the period of appeal can have no influence on the decision. (H, C. Pro., 15th November 1870 ; V, H. C. Rep., App. xliv.)

Section 7.—*Q.* When plaintiff sued to redeem a mortgage and defendant set up a sale and defendant claimed to value his appeal according to the value of the land instead of on the principal money secured by the mortgage instrument ;

A. *Held*, that the nature of the claim and the relief sought as set forth in the plaint must regulate the value. (Opinion of Chief Justice, dated [illegible] June 1870.)

Section 7, *para. IV, note c.*—*Q.* Whether a suit to declare plaintiff's sole right to a sum of money deposited jointly by two parties with a public officer, together with interest thereon, payment of the said sum having been withheld on account of defendant's objection, is a suit for a declaratory decree with consequential relief ?

A. *Held*, that as the plaintiff claimed interest on the amount deposited, that was a prayer for relief which could be enforced by execution, and that as the Act makes no distinction in favor of suits where the prayer for consequential relief is confined to a part of the property with respect to which the consequential relief is sought, the whole claim must be valued under note *c*, para. IV. (Opinion of Chief Justice, dated [illegible] 1870.)

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Section 7, para. V—*Q.* When plaintiffs sued to recover land alleged to have been sold by them to defendants under a conveyance deed;

A. *Held*, that the suit must be valued as a suit for recovery of the land, not as a suit for specific performance of a contract of sale—the allegation of the plaintiffs being that there was an absolute conveyance though no delivery of possession. (Opinion of Acting Chief Justice, dated 28th January 1871.)

Section 7, para. V.—*Q.* Whether Inam holdings paying quit-rent fall within Clause (*a*) or Clause (*c*) of para. 5, of Sec. 7?

A. *Held*, that Clause (*a*) refers to all lands paying the full revenue assessment under a permanent settlement; Clause (*b*) to all lands paying the full revenue assessment, but not under a permanent settlement; Clause (*c*) to all lands free from revenue or paying less than the full assessment, or any fixed payment in lieu of revenue. *Held*, therefore, that all Inam holdings at an easy quit-rent are within Clause (*c*). (Opinion of Chief Justice, dated 15th July 1870.)

Section 7, para. V, note a.—*Q.* Whether in a suit by landlord against tenant the words "net profits" in Clause (*c*) of para. V of Section 7, means that which accrues to the tenant or that which accrues to the landlord, i. e., the rent?

A. *Held*, that the words nett profits mean always that which accrues to the tenant—the basis of calculation throughout the Act being the value of the object sought to be recovered, not what accrued to the seeker of recovery before such recovery. (Opinion of Acting Chief Justice, dated 9th November 1870).

Section 7, para. X, note a.—*Q.* When plaintiff sold land to defendant, and defendant afterwards executed a document agreeing to re-sell to plaintiff if the original purchase money was repaid within a certain term.

A. *Held*, that a suit brought by plaintiff to enforce this contract was a suit for specific performance of a contract of sale. (Opinion of Chief Justice, dated 25th June 1870).

Section 31.—*Q.* Whether fees ordered to be repaid to complainant by person convicted, should be paid over at once or retained in deposit as provided in Section 44 of the Code of Criminal Procedure.

A. *Held*, that the order to re-pay is an integral part of the sentence, and that the fee must be treated in all respects as a fine imposed by the court. (Pro. of H. C. 20th July 1870; V. H. C. Rep., App. xxviii.)

Schedule 1, Article 4.—*Q.* When plaintiff obtained a decree for redemption and omitted to tender the redemption money within the three months fixed by the decree.

A. *Held*, that an application to extend the time could not be made by simple petition, but must be treated as an application for review of judgment under Article 4 of Schedule 1. (Opinion of Chief Justice, dated 13th July 1870).

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Schedule 1, *Articles* 6, 7 *and* 9.—*Q.* Whether copies of [illegible] requiring a stamp fee under Articles 6, 7 [illegible] Schedule 1, can be given on plain paper [illegible] vate use to parties or their counsel?

Under what Article of the Schedule [illegible] execution orders, notes of evidence, pla[illegible] tions, &c. fall?

A. Held, that the Act makes no distinct[illegible] copies obtained for private use, and copie[illegible] for any other purpose.

Held, that copies of orders in ex[illegible] decrees fall under Article 6; that copie[illegible] of evidence taken by a judge fall under [illegible] and that copies of plaints, petitions, &c[illegible] empt. (Opinion of Chief Justice, da[illegible] March 1871.) See also Pro. of H. C., [illegible] July 1869.

17. Plaint or petition for execution, preferred under Mad[illegible] tion VI of 1831 should be written on a stamp of *eight annas* [illegible] memoranda of appeal under the said Regulation should [illegible] on a stamp of two rupees each. G. O.

18. When adhesive stamp alone is used to denote any [illegible] be a stamp of value equal to the fee required; and when [illegible] stamp of equal value, then the first stamp shall be of the [illegible] available value, and the margin or balance shall be made up [illegible] similarly selected. (G. O. communicated by H. C. 21st [illegible])

19. Under Articles 4 and 5, Schedule I, Act VII of 1870, [illegible] be calculated on the amount which would be obtained if [illegible] were granted, and not necessarily on the whole value of the [illegible] Pro., No. 57 of 16th January 1872; VII, H. C. Rep., App. [illegible]

20. A schedule appended to a deed of sale does not re[illegible] stamped under Act XVIII of 1869. (VI, H. C. Rep. A[illegible] Pro., 3rd November 1871.)

TRANSLATIONS.

1. Native terms and dates are not generally to be adm[illegible] translations of deeds and other vernacular papers; but w[illegible] use is unavoidable, an explanatory note in English is also [illegible] immediately under them. (Sudr Pro., 22nd June 1836.)

2. Translations of papers, if required, should be applied [illegible] the case is posted. (I, H. C. Rep., 130.)

3. The remuneration for translations of judicial papers [illegible] than those connected with appeals to Her Majesty in Council, [illegible] one rupee for every three hundred words. (Sudr Pro. 16th J[illegible]

TRIALS.

1. Every procedure or step towards the hearing or d[illegible] of suit is to be taken according to the order of the suit on [illegible]. Suits in which no step can be taken will thus be postponed [illegible] of those ready for advancement, and every suit ready for adv[illegible] will be taken up according to its order of the file. (Sudr [illegible] September 1860.)

2. No departure from this plain rule will be permitted unl[illegible] for some good and sufficient reason of which the judge must be [illegible] to give explanation. (H. C. Pro., 11th April 1861.)

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3. Where there are special reasons of an urgent nature, as where a party with limited leave of absence is a party, the courts are at liberty to take up suits for trial out of their order on the register; but the circumstances of each case in which this liberty is used by a district munsif must afterwards be explained to the civil judge. (Sudr Pro., 7th August 1861.)

4. If in any suit heard in the order above described, the trial be brought to a close, the court, if prepared, will at once give judgment, though judgment may not yet have been pronounced in other suits instituted before such suit. (Sudr Pro., 7th August 1861.)

5. The court may also in any suit in which it may have reserved its judgement at the close of the trial, proceed to deliver judgment therein at any time, notwithstanding that suits of prior date may still be pending. (Sudr Pro., 17th September 1860.)

6. Each district munsif will forward monthly to the civil judge a statement showing the number of pending suits of prior date, those in which judgment has been given, and explaining briefly the progress made in each of the first twenty of such suits during the month, and the circumstances which have prevented him from bringing them to a termination. (Sudr Pro., 17th September 1860.)

7. Explanation is not to be given concerning those suits in which judgment has been pronounced out of their order on the file, but respecting those which have been passed over. (Sudr Pro., 20th October 1860.)

8. Section 114, as well as Sections 110 and 111 of the Code, have reference *only* to the first hearing of the suit, which may be either on the day named in the summons or on a subsequent day to which such hearing may have been adjourned. (IV, H. C. Rep., 56; VI, Ibid. 262 Sec. 14.)

9. Where a defendant appears in person or by pleader, the fact that the defendant is not prepared to put in a written statement does not warrant the trial of a suit *ex-parte*. (II, H. C. Rep., 311.)

10. When a suit is adjourned from time to time and one of the parties is in default at the adjourned hearing, a decree passed under such circumstances is a decree under Section 148 and is not an *ex parte* decree. (IV, H. C. Rep., 254.)

11. One co defendant whose interests are separately represented may cross-examine another. (I, H. C. Rep., 456.)

12. Trying *two* cases at the same time is *very* irregular. (H. C. Pro., No. 2288 of 19th November, 1869.)

13. The landholder himself or the person authorized by the landlord to distrain may move a civil court under Section 27 of Madras Act VIII of 1865.

The application should be by petition on the usual stamp, and when the summons has been returned and the parties heard, a summary order should be recorded. (Judgment in Ref. Case 19 of 1869.)

14. On the day fixed for the first hearing, neither parties appeared; the court dismissed the suit under S. 148 of the Civil Procedure Code, but afterwards, on plaintiff's application under S. 19, restored the suit to file. The plaintiff obtained adjournment to produce witnesses, but on the day to which the case was adjourned, no witnesses were produced, though the vakils of both parties appeared, and the court dismissed the suit under S. 148. The suit was again, under S. 119, restored to the file, and, upon merits, a decree was passed. On the appeal against the last decree, the judge reversed the original decree on the ground that as S. 119 was inapplicable to a decree passed under S.

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148, the original court had acted without jurisdiction in rejecting the suit to file. *Held*, on special appeal reversing the decision of the appellate court, that the first decree of dismissal being a decree which might have been made under S. 147, was one to which S. 148 could be applied; that the second decree of dismissal was one to which S. 148 alone applied, and consequently one subject only to *Regular* appeal, and that the last proceeding being substantially an application for review, was one which the court had power to grant. (W. R. C. Rep., 262.)

VAKALUTNAMAH.

1. Every vakalutnamah must be executed by the party himself, and must be signed before and authenticated by some judicial functionary. (Sudr Pro., 1st December 1858.)

2. A vakalutnamah may be authenticated by a village [illegible]. (Sudr Pro., 21st February 1862.)

3. Where the party is exempted from personal attendance in the courts, or unable from sickness or other cause to attend, the execution of the vakalutnamah may be verified by the attesting witnesses in the presence of the judicial functionary.

4. No vakalutnamah is to be authenticated unless the pleader's name be inserted therein previous to its execution. (Sudr Pro., 1st December 1858.)

☞ The judges and magistrates shall not levy any fees for attesting vakalutnamahs and powers of attorneys intended to be used in *civil* and *criminal* cases. (Government order 3rd January 1872, No. 743, and 23rd January 1872, No. 81; High Court Letter of 18th November 1871, No. 1896, in reply to Government Letter of 16th October 1871, No. 1073 Jud. Depart.)

5. No vakalutnamah will be filed unless it be noted [illegible] the handwriting of the vakil to whom it is executed, that it is "accepted" by him.

6. Where a person is a party in two or more connected suits, he must execute a separate vakalutnamah in each case, notwithstanding that he may retain the same pleader in all.

7. Where the party may afterwards retain additional vakils, he may either execute a fresh vakalutnamah, to be signed by all the vakils by whom it is accepted, and to be substituted for the former vakalutnamah; or he may execute a separate vakalutnamah for the additional vakil. (Sudr Pro., 24th July 1851.)

8. A vakil retained in a suit cannot afterwards appear for the same client in an appeal from an order passed in execution of the decree in such suit, unless he put in a fresh vakalutnamah. (Sudr Pro., 17th August 1860.)

9. Any vakil authorized by a party to receive money on his behalf, is to produce a vakalutnamah expressly giving him such authority. (Sudr Pro., 26th June 1855.)

10. A party who has retained a vakil to appear for him cannot be heard in person, unless he first withdraw the vakalutnamah. (Sudr Pro., 15th March 1821.)

11. A party is at liberty to dispense with the services of his vakil whenever he thinks fit, without assigning any reason. (Sudr [illegible] November 1849.)

12. All powers conferred on a vakil cease upon the death of the person executing the vakalutnamah. (Sudr Pro., [illegible]

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VAKILS.

1. Any person possessing the qualifications and producing the certificates or certificate required by any of the three following rules shall be qualified to apply to be admitted and enrolled as a vakil of the High Court, but subject in the case of an applicant under the second rule to his passing such an examination in matters of practice as the court may prescribe. Provided that it shall be necessary in every case to give two months' notice of the intended application for admission by publication in the Gazette, and by affixing a copy of the same on the notice-board at the court house.

(*a*) The degree of Bachelor of Laws of the University of Madras, and certificates of having, subsequently to the attaining of such degree, studied for six months with an advocate of the high Court at Madras, or a vakil entitled as such to practise on both the original and appellate sides of the said court, and for a further period of six months in the office of an attorney of the said court, or a certificate of having studied for twelve months either with an advocate or vakil entitled to practise as aforesaid, or in the office of an attorney, as also in either case a certificate of good character and conduct. Such certificates or certificate to be signed by the advocate, vakil and attorney with whom or in whose office the applicant shall have studied.

(*b*) The degree of Bachelor of Laws of the University of Madras and a certificate signed by the registrars on the original and appellate sides of the High Court, of regular attendance upon the sittings of the court, in accordance with such rules as the judges may in that behalf prescribe, for two years subsequently to the time of attaining such degree; as also a certificate of good character and conduct signed by two advocates or an advocate and a vakil.

(*c*) Any person producing the proper certificates or certificate of his having kept six terms at one of the Inns of Court in London, and of regular attendance on the course of Law Lectures while keeping such terms, as also of his having passed one of the examinations provided for students, together with a certificate of subsequent study for nine months with an advocate of the High Court at Madras, or a vakil entitled as such to practise on both the original and appellate sides of the said court, or in the office of an attorney of the said court and of good character and conduct: such last-mentioned certificate to be signed by the advocate, vakil or attorney with whom or in whose office the applicant shall have studied. (H. C. Rule, 1st October 1863.)

2. Vakils of the High Court are entitled to practise in all the civil and criminal courts subject to the control of the High Court. (H. C. Pro., 31st October 1863.)

3. A vakil of the High Court pleading in the lower court is not entitled, without express permission, to address the court in English, if he be acquainted with the language of the district, and the opposing pleader does not understand English. (Sudr Pro., 21st April 1858.)

☞ No person shall be appointed a vakil in the Civil and Sessions Court, Principal Sudr Amin's Court, and Mofussil Small Cause Court, unless he has successfully passed the Special Test Examination. (Civil Law of Evidence Act I of 1872; Code of Civil Procedure; Civil Rules of Practice; the Law of Contracts, Act IX of 1872; Collett's Manual of the Law of Torts and Measure of Damages; T. L. Strange's Manual of Hindoo Law and the First Volume of Sir Thomas Strange's Hindoo Law; Sadagopa Charier's Manual of Mahomedan Law; and Goldsmith's "Doctrine of Equity," pp. 56-249 and 267-301.—*Criminal.* Evidence

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Act I of 1872; Mayne's Penal Code; Criminal Procedure and Criminal Rules of Practice; *Lower Grade Translation*; and *Precis* [illegible] Higher Grade;) and no person shall be appointed as a Vakil in the District Munsif's Court unless he has passed the 9th Test of [illegible] tion (Evidence Act I of 1872; Code of Civil Procedure; [illegible] Manual of Hindoo Law; and Sadagopah Charier's Mahomedan [illegible]

4. Vakils of a civil court are entitled to practise in all [illegible] criminal courts subordinate to that court. (H. C. Pro., 4th [illegible] 1865.)

5. A vakil retained by one party in a suit is not precluded from afterwards accepting a vakalutnamah from the other party, if the [illegible] cause or interest again come under adjudication. (Sadr Pro., 9th November 1859.)

6. A vakil retained in any case has discharged his duty to his client on the decree being made, and is not bound to appear on any application for review of judgment without further instructions. But if prepared to appear, he may do so without a fresh Vakalutnamah; provided that if any such vakil take any step in the review, it will be incumbent upon him to appear at the hearing.

7. When a suit is remitted by an appellate court for a re-hearing or finding on an issue, the proceedings on such order must be regarded as a further proceeding in the trial of the suit, and consequently under Section 22 of Reg. XIV of 1816 a vakil cannot change sides and hold a vakalutnamah for the party opponent to the one for whom he appeared at the first hearing. (H. C. Pro., 8th April 1859.)

8. Vakils will not be allowed access to the original records of suits, but will be required to provide themselves with private copies under the rules relating to copies. (Sadr Pro., 22nd June 1859.)

9. No vakil will be allowed to speak out of his turn at the hearing of a case, except for the purpose of taking a preliminary objection, correcting a mis-statement of facts, putting a necessary question, or removing a misconception respecting some argument or assertion put forth by himself.

10. All observations which a vakil may desire to make at the hearing are to be addressed to the court and never to the vakil on the other side.

11. At the hearing of cases in which vakils are retained on both sides, the vakil for the plaintiff or appellant, as the case may be, will have the right to begin; the Vakil for the defendant or respondent will answer, and the plaintiffs or appellants will be entitled to reply.

12. After the vakils on both sides have been heard, no vakil is to offer any remarks except in answer to questions put by the court; and, after judgment given, no vakil will be allowed under any circumstances further to touch upon the matter adjudicated.

13. Vakils are not to be unreasonably checked in the freedom of language they may employ on behalf of their clients. (Sudr Pro., 6th November 1819.)

14. A vakil who has put in his client's pleadings, is entitled under the regulations to half his fees, though the suit be withdrawn before the pleadings of the other party are complete. (Sudr Dec., 1859, p. 24.)

15. The provisions of Section 30, Regulation XIV of 1816, that each of two vakils appointed by a party to a suit shall be entitled to a moiety of the fee payable, applies only to cases where they are appointed by the same vakalutnamah. (I. H. C. Rep., 362.)

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16. Appeals presented to the High Court by vakils dismissed by the lower courts are to be submitted through the civil judge, and orders will be passed thereon by the High Court in the character of a supervising body without any hearing in open court. (Sudr Pro., 9th June 1858.)

17. Vakils are prohibited from purchasing from their clients or from any other person any interest in any decree passed by the court in which they practice. (H. C. Pro., 1095 of 9th June 1870.)

18. A vakil can commit no irregularity by absenting himself without leave. Section 2, Act XX of 1853. (H. C. Pro., 13th July 1871.)

19. Native judicial officers are prohibited from admitting their relatives as pleaders in their courts. (Sudr Pro., 18th April 1853.)

VOLUNTEERS.

1. The employment of volunteers to aid the regular ministerial establishments of the courts is strictly prohibited, and the sherishtadar or other chief officer will be held responsible that they are not admitted. (Sudr Pro., 11th June 1859.)

WITHDRAWAL OF SUITS.

1. An appellant has no right to withdraw an appeal which has been regularly registered, without the permission of the court.

Where the appellant had given notice of the withdrawal of the appeal before the day of hearing, and notice of withdrawal had been given to the respondent, but not until costs had been incurred: *Held*, that the appellant was not at liberty to withdraw the appeal, and the court ordered that the appeal be set down for hearing. (III, H. C. Rep., 368.)

APPENDIX I.

Original Jurisdiction of Civil Courts acting under the Civil Procedure Code.

		Amount of Jurisdiction.	Nature of Suit	Salary of Judge.
		Rs.		Rs.
Small Cause Court.....	Act XI. 1865.	500	Personal	1,400
District Munsif's Court	Reg. III. 1833.	1,000	Real	200
			and	250
			Personal.	300
Sudr Amin's Court.....	do	2,500	do	200
Principal Sudder Amin's Court.....	Act VII. 1843.	Under 10,000	do	500
Subordinate Court.....	do	„	do	1,400
Civil Court	do	Above 10,000	do	2,333-5-4
High Court, Original Jurisdiction.....	Charter.	Unlimited.	do	———

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APPENDIX II.

PLEADER'S FEES.

The following Table of Fees was prescribed by Section 25 Regulation XIV of 1816.

If the amount or value of the claim shall not exceed 5,000 Rupees, five per cent.

If the amount or value shall exceed 5,000 Rupees and shall not exceed 20,000 Rupees; on 5,000 as above, and on the remainder two per cent.

If the amount or value shall exceed 20,000 Rupees, and shall not exceed 50,000 Rupees; on 20,000 as above, and on the remainder one per cent.

If the amount or value shall exceed 50,000 Rupees, and shall not exceed 80,000 Rupees; on 50,000 as above, and on the remainder eight annas per cent.

If the amount or value shall exceed 80,000 Rupees, the fee to the vakil shall be one thousand rupees; and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakil may be employed.

In all the preceding calculations, where the amount or value may be in fractions of Rupees, such fractions are to be rejected in calculating the fees thereupon.

Sec. 6, Act I of 1846, however, provides that Section 25, Regulation XIV of 1816, shall cease to be enforced, excepting for the purpose specified in Sec. VII of the Act, which permits parties to settle with pleaders by private agreement the remuneration to be paid for professional services, which agreement it is not necessary to specify in the vakalutnamah; but prescribes that when costs are awarded in a suit decided on its merits, pleader's fees shall be calculated according to this section, and when costs are awarded in other cases, the amount of such fees shall be one fourth what it would have been in a regular suit decided on its merits.

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