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THE  
LEGISLATIVE ACTS  
OF THE  
GOVERNOR GENERAL OF INDIA  
IN COUNCIL  
OF 1865,

WITH ABSTRACTS PREFIXED, TABLE OF CONTENTS  
AND INDEX

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*In continuation of the Acts from 1834 to the present time.*

BY

WILLIAM THEOBALD, ESQ.,

BARRISTER AT LAW

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**WITNESSES.**—(*Indian Succession Act.*)—*See Will, Attesting Witnesses.***WRIT AND WARRANT.**—(*High Court, Calcutta.*)

For arrest of offender not to be directed by High Court to Sheriff.

**YEAR AND MONTH.**—(*Indian Succession Act.*)

How to be reckoned, 64.



## ACTS AND REGULATIONS EXTENSION ACT.

ACT NO. I. OF 1865.

[*Received the assent of the G. G. on the 7th January 1865.*]

Recites expediency of authorizing the Executive Governments to extend Regulations to Non-Regulation parts.

1—3. Authorizes the Government of India and (2) Lieutenant-Governor of North-Western Provinces and Lieutenant-Governor of Punjab to extend Acts and Regulations to their Provinces, by notification in Official Gazette; and (3) to define by whom powers shall be exercised, &c.

4. From date of extension all anterior Regulations repugnant, &c., to the same to cease to have effect.

5. Short title of Act as above.

**WHEREAS** it is expedient to authorize the Governor-General of India in Council and the Lieutenant-Governors of the North-Western Provinces and the Punjab, to extend to Non-Regulation Provinces under the immediate administration of the Government of India, or under the Governments of the Lieutenant-Governor of the North-Western Provinces and the Punjab respectively, certain Acts and Regulations in force at the time of the passing of this Act in parts of British India subject to the General Regulations; **It is enacted as follows:—**

1. From and after the passing of this Act, it shall be lawful for the Governor-General of India in Council, from time to time, by notification in the Gazette of India, to extend to any Non-Regulation Province under the immediate administration of the Government of India the operation of any Act or Regulation, or of any portion of any Act or Regulation, in force at the time of the passing of this Act in any part of British India subject to the General Regulations.

Governor-General in Council may extend to certain Non-Regulation Provinces Acts and Regulations not in force there at the passing of this Act.

2. From and after the passing of this Act, it shall be lawful for the Lieutenant-Governor of the North-Western Provinces as to the Non-Regulation Provinces under his government, and for the Lieutenant-Governor of the Punjab as to the Territories under his government, by notification in the Official Gazette, to extend to such Provinces and Territories respectively the operation of any Act or Regulation of the Government of India, or of any portion of any such Act or Regulation, in force at the time of the passing of this Act in any part of British India subject to the General Regulations.

3. Whenever the operation of any Act or Regulation or of any portion of any Act or Regulation shall be extended under either of the last two preceding Sections, the Governor-General of India in Council or the Lieutenant-Governor making such extension, may direct by whom any powers or duties incident to the provisions applied under such Section shall be exercised or performed, and may make any order which shall be deemed requisite for carrying such provisions into operation.

4. From the date of any such extension, so much of any Rule having the force of law which shall be in operation in the Territories to which such extension shall have been made, as shall be inconsistent with or repugnant to the enactment whose operation shall have been so extended, shall cease to have effect in such Territories.

5. This Act shall be called "The Acts and Regulations' Extension Act, 1865."

## GOVERNMENT OF THE RURAL POLICE—N. W. PROVINCES.

### ACT NO. II. OF 1865.

[Received the assent of the G. G. on the 7th February 1865.]

Recites expediency of providing for the better maintenance of the Rural Police.

1. As to interpretation of words of number.

2—3. Proprietor of estate may assess house tax not exceeding one rupee per annum on every house on his estate; and (3) may collect the tax with his rent, in advance &c.; subject to Act X, 1859, s. 23, c. 3, for unlawful assessments.

4. Extends Reg. IX, 1833, ss. 12, 13, 14, 15, to assessments under this Act.

5. Gives persons aggrieved remedy by petition.

6—7. Authorizes Collector to assess proprietors to extent of the house assessments, less 10 per cent., irrespective of Municipal assessments, and (7) may alter such assessment with sanction of Government.

8—9. This Act to apply to Maafee and Nuzerana estates, which may be assessed, at what rate, to a Municipal cess; and (9) times of payment and amount of instalments to be fixed by Government.

10. Assessments to be applied to Village Police, &c., under order of Government.

11—12. Proprietors to nominate, and Magistrate appoint, village watchmen, &c.; (12) whose duties shall be what.

13—15. Empowers Lieut.-Governor to extend this Act to any part of North-Western Provinces, except as to villages under Act XX, 1856; and (14) Governor-General in Council may extend it to Punjab, with same exception, and (15) from date of extension all rules inconsistent with Act to cease to have operation.

WHEREAS it is expedient to provide for the better maintenance of the Rural Police in the Territories

Preamble.

under the government of the Lieutenant-

Governor of the North-Western Provinces and elsewhere; It is enacted as follows:—

I. In this Act the singular number includes the plural, and the plural number includes the singular.

“ Number.”

II. The proprietor of any estate situated in any District to which the provisions of this Act may be extended, shall have authority to assess and collect, for the purposes of this Act, a sum not exceeding one Rupee per annum

Proprietors of estates in Districts affected by this Act may assess and collect house tax.

from the occupant of every house upon such estate. It shall be competent to the Collector of the District, acting under the orders of the Local Government, to determine what buildings shall be held to be a separate house for the purposes of this Act.

III. The sum so assessed shall be held to fall due, in advance for the coming Revenue year, with the first instalment of agricultural rents payable in the vicinity in that year, and may be realized under the law for the time being in force in such vicinity relating to the recovery of rent. Provided that no person shall be liable to be ousted from his house for non-payment of any assessment leviable under the last preceding Section. Complaints against proprietors for unlawful collection of such assessments shall be treated as falling under Clause three, Section twenty-three, Act X of 1859 (*to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal*).

IV. Sections twelve, thirteen, fourteen, and fifteen of Regulation IX of 1833 (*to modify certain portions of Regulation VII of 1822, and Regulation IV of 1828 ; to provide for the more speedy and satisfactory decision of Judicial questions cognizable by Officers of Revenue employed in making Settlements under the above Regulations ; for enforcing the production of the village accounts ; for the more extensive employment of Native agency in the Revenue Department ; and to declare the intent of Section V, Regulation VII of 1822, touching claims to Malikana*), shall be applicable to assessments under this Act.

V. Any person assessed under Section two of this Act may, by petition on unstamped paper, complain to the Collector of the District against such assessment, on the ground of inability to pay the same; and the Collector shall be competent to abate, or wholly to remit, the assessment, if he shall be of opinion that the circumstances of the complainant render such abatement or remission proper.

VI. It shall be lawful for the Collector or for any Officer making Settlements of Land Revenue, to assess upon any estate, as aforesaid, a sum to be contributed yearly by the proprietor for the purposes of this Act, not exceeding the aggregate

Assessments to be due annually with first instalment of rent.

Regulation IX of 1833, Sections 12 to 15, to apply.

Persons assessed may petition against assessment, and Collector may abate or remit same.

Collector may assess yearly contribution for purposes of this Act.

gate of the house assessments in any such estate, less ten per cent. Such assessment shall be over and above any Municipal cess or percentage levied on the Land Revenue for similar purposes.

VII. The sum so assessed shall, subject to the sanction of the Local Government, be liable to be altered from time to time in conformity with the foregoing provisions.

Such assessment may from time to time be altered.

VIII. The provisions of this Act shall be applicable to Maafee and Nuzerana estates. Besides the assessments made by the Collector under Section six of this Act, it shall be lawful to levy upon the Maafeedars, or (where a sub-settlement shall have been made) on the sub-proprietors, or on the Nuzeranadars, a Municipal cess not exceeding two Rupees twelve annas per cent. of the jumma at which their estates would have been rated if not held under a Maafee or Nuzerana title.

IX. The Local Government may determine by what instalments and at what times, the assessments payable under Sections six and eight shall be paid. Any arrear of such assessments may be realized by the same processes and under the same rules as arrears of Land Revenue.

X. Assessments realized under this Act shall be appropriated, under the orders of the Local Government, to the payment of the Village Police or to any other purpose connected therewith. Any surplus that may remain shall be at the disposal of the Local Government for sanitary purposes, or any other purpose of general improvement within the District in which the amount is collected.

XI. Every proprietor or other person, in whom the right of nomination of Village Watchmen is vested, shall nominate a fit and proper person within fifteen days of the occurrence of any vacancy in the office of Watchman on

Persons empowered to nominate Village Watchmen shall do so within fifteen days after occurrence of vacancy.



his estate ; and the person so nominated shall after due enquiry be appointed or rejected by the Magistrate of the District at his discretion, or by any Officer authorized by him in that behalf. In default of a nomination within fifteen days of the occurrence of a vacancy or of the rejection of a nominee, the proprietor or other person in whom the right of nomination is vested shall be held to be guilty of disobedience to lawful authority, and shall be liable, by order of the Magistrate, to a fine not exceeding Rupees fifty, and in default of payment to imprisonment in the Civil Jail for a period not exceeding one month ; and the Magistrate of the District shall proceed to appoint a person to the vacancy.

XII. Any Village Watchman appointed under this Act may be required to perform, within the limits of his village, and in addition to his other duties, any duties required of Police Officers under Act No. V of 1861, (*for the Regulation of Police*) ; and he shall be liable to the same penalties for any neglect or disobedience which he would have incurred had he been a Police Officer subject to the provisions of such Act, and guilty of neglect or disobedience, as the case may be.

XIII. The Lieutenant-Governor of the North-Western Provinces may extend the provisions of this Act to any part of the Territories within his jurisdiction. Provided that this Act shall have no operation in any village to which Act No. XX of 1856 (*to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazaars, in the Presidency of Fort William in Bengal*), or any other special Municipal Law shall have been extended, so long as such Act or Law shall continue in force in such village.

XIV. Subject to the proviso contained in the last preceding Section, the Governor-General of India in Council may extend the provisions of this Act to any Province under the immediate

Village Watchmen to perform duties of Policemen under Act V of 1861, in addition to his other duties.

Power to Government of North-Western Provinces to extend this Act.

Power to Governments of India and of the Punjab to extend this Act.

administration of the Government of India. Subject to the like proviso, the Lieutenant-Governor of the Punjab may also extend the provisions of this Act to any part of the Territories under his government.

XV. From the date of any such extension, so much of any Rule having the force of law which shall be in operation in the Territories to which such extension shall have been made, as shall be inconsistent with or repugnant to this Act, shall cease to have effect in such Territories.

### THE CARRIERS' ACT.

#### • ACT No. III OF 1865.

[*Received the assent of the G. G. on the 14th February 1865.*]

Recites expediency of enabling Common Carriers to limit their liability, and of defining their liability, &c.

1. Name of Act—"THE CARRIERS' ACT, 1865."

2. Interprets words—Common Carrier; Person; and nouns of Number.

3—5. Relieves Carrier of liability for loss or damage to scheduled property of more than 100 rupees, unless value declared; and (4) Carrier may charge higher rates for such property, if notice given in prescribed manner; and (5) is to return money paid for carriage, where liability for loss attaches

6—7. As to descriptions of property not named in Schedule, Carrier's liability not to be limited by public notice, but may be by special contract except of Carriers under Act XXII, 1863; who (7) shall be liable only for loss or damage caused by negligence, or a criminal act of themselves or servants.

8—9. Saves liability of all Carriers in all cases for loss or damage arising from negligence, or criminal act of the Carrier or his servants; and (9) in actions against Carriers, plaintiff needs not prove the loss to have been by negligence or criminal act.

10. Nothing in this Act to affect Act XVIII, 1854, ss. 9, 10, 11.

#### SCHEDULE.

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,

Preamble.

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” 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.
- “Common Carrier.”
- “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.

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.

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 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.

**Proviso.** For carrying such property, payment may be required at rates fixed by Carrier.

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.

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 person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

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.

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.

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

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.

by negligence or a criminal act on his part or on that of his agents or servants.

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 the negligence or criminal act of the Carrier or any of his agents or servants.

Common Carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

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.

Plaintiffs, in suits against Common Carriers, for loss, damage, or non-delivery, not required to prove negligence or criminal act.

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*).

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

## 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.

Bills 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 Lacé.

Cloths and tissues embroidered with the precious metals or of which such metals form part.

Articles of ivory, ebony, or sandal-wood.

### ADMINISTRATOR GENERAL'S ACT.

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#### ACT NO. IV. OF 1865.

[*Received the assent of the G. G. on the 22nd February 1865.*]

Recites provisions of Act VIII, 1855, and Section 21 of the Regimental Debts Act, 1863.

1. Interprets words "Officer," "Soldier."
2. Act VIII, 1855, Section 26, not to apply to specified cases, and Administrator General not to have his commission on funds previously administered in respect of preferential charges.
3. Act named the "ADMINISTRATOR GENERAL'S ACT, 1865."

WHEREAS under or by virtue of the twenty-sixth Section of Act No. VIII of 1855 (*to amend the Law relating to the Office and Duties of Administrator-General*), the Administrator-General of each of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay is entitled to receive a commission at the rates respectively therein mentioned upon the amount or value of the assets which he shall collect and distribute in due course of administration; And whereas by the twenty-first Section of "The Regimental Debts Act, 1863," it is declared that an Administrator-General shall not be entitled to take, and it shall not be lawful for him to take, a percentage on the property of an Officer or Soldier dying on service exceeding three *per centum* on the gross amount coming to his hands if preferential charges have been previously paid, or on the gross amount

remaining in his hands after payment by him of preferential charges, as the case may be ; It is enacted as follows :—

I. In this Act—

Interpretation/Clause.  
“ Officer.”

The term “ Officer” means a Commissioned Officer of Her Majesty’s Army or of Her Majesty’s Indian Army.

“ Soldier.” The term “ 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.

II. From and after the passing of this Act, the twenty-sixth

Act VIII of 1855, Section 26, not to apply to property of Officers and Soldiers dying on service which shall come to hands of Administrator-General.

Section of Act No. VIII of 1855 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 Regimental Debts Act, 1863 ;” and such Administrator-General shall not be entitled to take, and it shall not be lawful for him to

Administrator-General only entitled to a commission of three per cent. on gross amount of such property.

take, a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of this Act, 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.

Short Title.

III. This Act shall be called “ The Administrator-General’s Act, 1865.”

## THE INDIAN MARRIAGE ACT, 1865.

### ACT NO. V. OF 1865.

[Received the assent of the G. G. on the 23rd February 1865.]

Recites expediency of providing a further marriage law for Christians.

1—3. Preliminary. Name of the Act, the “ INDIAN MARRIAGE ACT 1865”  
(2) Act to commence on 1st May 1865, and extend to all territories vested

by 21 and 22 Vic. c. 106; and (3) repeals Act XXV, 1864, from 1st May 1865.

4. Interpretation of the terms Church of England, Anglican, Church of Scotland, Church of Rome, Roman Catholic, Church, Minor, Native Christians, Section, Month, Year, Local Government.

PART I.—*As to persons by whom Marriage may be solemnized—*  
5—10.

5—6—9. Directs by what persons marriage may be solemnized; viz., (6) episcopally ordained Ministers, Scotch Church Clergymen, Marriage Registrars, Licensed Ministers; and (9) makes void all marriages not solemnized according to this Act.

7. Dispenses with the Declaration and Certificate required by 58 Geo. 3, c. 84 and Act XXIV. 1860.

8. Authorizes Local Governments to grant licenses to Ministers to solemnize marriage.

9. *Supra.* •

10. Gives validity to marriages solemnized before 1st May, by certain persons not legally competent.

PART II.—*As to the mode of solemnizing Marriages under this Act, 11—27.*

11—18. In all marriages under the 14 and 15 Vic. c. 40 or Act V, 1852, or by episcopally ordained, or Scotch Church Clergyman, or by licensed person, notice in Form A. of Schedule shall be given, to whom, stating what, &c.; which notice (12) shall be published, where and how, and (13) what is to be done with it if the marriage is to be in private dwelling; and (14) if one of the persons be a minor to be sent to District Marriage Registrar; or (16) Senior District Marriage Registrar, who (15) shall do what with it; which notice (17) shall, if required, be certified, &c.; but (18) certificate not to be issued for 14 days if one party be a minor.

19. Declaration to be made before issue of certificate, that there is no legal impediment, &c., to marriage.

20—22. Consent of parent or guardian necessary in case of minor not being a widow or widower; and (21) person whose consent is necessary may prohibit the marriage; and (22) after prohibition case to be examined, &c.

23—24. Special proceeding in case of Native Christians, and (24) form of certificate to be issued.

25—26. Authorizes the marriage, but in presence of two witnesses, and (26) within two months.

27. Saves from these regulations marriages under Part I of this Act.



**PART III.—As to time for solemnizing Marriages.**

28. To be solemnized only between 6 A. M. and 7 P. M., except by special license, or by Roman Catholic priests under general or special license.

**PART IV.—As to the Registration of Marriages in India, 29—46.**

29—34. All marriages, except under Act of Parliament, or Act V, 1852, to be registered, but defect of registration not to invalidate marriage; (30) how by Church of England Clergymen; who (31) are to make specified returns to Registrar of Archdeaconry; and (32) how and by whom in case of marriage by Roman Catholic priests, and as to returns; and (33) save as to marriages by Church of Scotland Clergymen; and (34) save as to marriages by episcopally ordained persons who have no official charge.

35—38. Entries in Register Book to be signed and attested; and (36) certificate to be sent to the District or Senior Registrar, who shall keep copy; (37) such copies to be filed with number of by Marriage Registrar, and (38) sent to Local Government.

39—43. Directs as to custody of original Register Book; and (40) as to transmission of returns of certain marriages to England; and (41) provides for correction of errors; and (42) for the right of making searches and obtaining copies; and (43) as to appropriation of fees.

44. Makes certified copies proof for, &c.

45. Saves from operation of this Part, registers or certificates of marriages not under this Act.

46. Christians alone to be appointed Marriage Registrars, under this Act.

**PART V.—As to the Marriage of Native Christians, 47—53.**

47—50. Authorizes Government to license persons to grant certificates for marriages; and (48) certificate shall be granted, if (1) the man be sixteen, the woman thirteen years of age, and (2) they are not within the prohibited degrees of consanguinity, (3) and are single, and (4) make prescribed marriage declaration, (5) between 6 A. M. and 7 P. M.; and (49) certificate, &c., obtained, being signed, shall be conclusive evidence of such marriage; and (50) all marriages so performed shall be valid.

51—52. Register book of such marriages to be kept, and (52) copies of entries to be given.

53. These Rules not to apply to marriages between Roman Catholics.

**PART VI.—As to Penalties, 54—63.**

54—63. Extends Indian Penal Code, s. 193, to false oath, declaration, notice or certificate for purpose of procuring marriage; and (55) Indian Penal Code, s. 105, to assuming to forbid marriage knowingly without personal right; and

(56) Indian Penal Code, s. 105, to unauthorized persons solemnizing marriage; and (57) to solemnizing marriage at other than legal hours or without witnesses; (except (58) under license from Church authority), and (59) to solemnizing marriage of minor, and (60) to Registrars for issuing certificates of marriage without compliance with the provisions of Act; and (61) to authorized persons, not being clergymen, &c., solemnizing marriage, without previous notice, or after certificate has expired, or issuing certificate after marriage has been legally forbidden; and (62) to unlicensed person issuing certificate; and (63) to offences against Register Book.

64—66. Extends Code of Criminal Procedure to offences, and (66) all proceedings under this Act, saving (64) rights of European British subjects; and gives Supreme Court of Judicature in Straits Settlements jurisdiction as to all offences under this Act.

SCHEDULES.—A. Notice of Marriage. B. Registrar's Certificate. C. Form of Register of Marriages. D. Ditto under Section 34.

Whereas it is expedient to provide further for the solemnization of marriages in India of persons professing the Christian Religion; It is enacted as follows:—

*Preliminary.*

I. This Act may be cited as "The Indian Marriage Act, 1865."

II. This Act shall extend to all the Territories that are or shall become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., cap. 106, entitled "An Act for the better Government of India," and shall commence and come into operation on the first day of May 1865.

III. From and after the commencement of this Act, Act No. XXV of 1864 (*to provide further for the solemnization of marriages in India of persons professing the Christian Religion*) is repealed except as to the recovery and application of any penalty for any offence which shall have been committed before such commencement.

Interpretation clause.

text—

"Church of England."

"Anglican."

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

"Church of England" and "Anglican" mean and apply to the United Church of England and Ireland as by law established.

“Church of Scotland.”

“Church of Scotland” means the Church of Scotland as by law established.

“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.”

“Church” shall include any Chapel or other building generally used for public

Christian worship.

“Minor.”

“Minor” means a person who has not completed the age of twenty-one years.

“Native Christians” includes the Christian descendants of Natives of India converted to Christianity as well as such converts.

“Native Christians.”

“Section.”

“Section” means a Section of this Act,

“Month” “Year.”

“Month” and “Year” respectively mean month and year reckoned according

to the British calendar.

And, in any part of British India in which this Act shall operate, “Local Government” shall mean

“Local Government.”

the person authorized to administer Executive Government in such part.

Executive Government in such part.

## Part I.

*As to the Persons by whom Marriage may be solemnized.*

V. From and after the commencement of this Act no marriage

Marriage between Christians to be solemnized according to the provisions of this Act.

between persons, one or both of whom shall profess the Christian Religion, shall be solemnized, unless in accordance with the

provisions of the next following Section.

By whom to be solemnized.

VI. 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 such person is a Minister.

2.—By any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, of Scotland.

3.—By, or in the presence of, a Marriage Registrar under the provisions of the Statute 14 and 15 Vic., cap. 40, or of Act V of 1852 (*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 Marriages in India*) of the Governor-General of India in Council.

4.—By any Minister of Religion who, under the provisions of this Act, has obtained a license to solemnize marriages.

5.—By any person who, with respect to marriages between Native Christians, shall have received, under the provisions of Part V of this Act, a license to grant certificates of marriage.

VII. From and after the commencement of this Act, the Declaration and certificate no longer required. declaration and certificate required by the Statute 58 Geo. III, cap. 84, and Act XXIV of 1860 (*for the solemnization of marriages in India by ordained Ministers of the Church of Scotland*) of the Governor-General of India in Council, shall be no longer required.

VIII. From and after the commencement of this Act the Licenses to solemnize marriage by whom to be granted Governor-General of India in Council, the Governors of Madras and Bombay in Council, the Governor of the Settlement of Prince of Wales' Island, Singapore and Malacca, and the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab, shall have authority to grant licenses to Ministers of Religion, to solemnize marriages within the Territories under the immediate administration of such Governor-General, or subject to such Governors and Lieutenant-Governors respectively, and to revoke such licenses, whether they shall have been granted before or shall be granted after the passing of this Act.

IX. From and after the commencement of this Act, all Marriages solemnized otherwise than according to this Act to be void. marriages which shall be solemnized in India otherwise than in accordance with the provisions of the fifth and sixth Sections shall be null and void.

X. All marriages which shall have been solemnized in India before the commencement of this Act by persons who have not received episcopal ordination, or who have not otherwise received express authority to solemnize such marriages under Acts of Parliament or Acts of the Governor-General of India in Council, shall, if not otherwise invalid, be deemed valid to all intents and purposes.

Marriages solemnized before first May 1865 by certain persons to be deemed valid.

## PART II.

*As to the Mode of solemnizing Marriages under this Act.*

II. In every case of intended marriage between persons, one or both of whom shall profess the Christian Religion, otherwise than—

I.—Under the provisions of the said Statute 14 and 15 Vic., cap. 40, or of the said Act V of 1852 : or

II. By a Clergyman who has received episcopal ordination, according to the rites, rules, ceremonies and customs of the Church to which he belongs : or

III. By a Clergyman of the Church of Scotland, according to the rites, rules, ceremonies and customs of that Church : or

IV. By a person who has received a license to grant certificates of marriage between Native Christians under the provisions of Part V of this Act—

One of the persons intending marriage shall give notice in writing according to the form contained in the Schedule A to this Act annexed or to the like effect, to the Minister of Religion whom he or she shall desire to solemnize the marriage, and shall state therein the name or names, and the profession or condition, of each of the persons intending marriage, the dwelling place of each of them, and the time (not being less than four days) during which each has dwelt there, and the Church or private dwelling in which the marriage is to be solemnized. Provided that if either of such persons shall have

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dwelt in the place stated in the notice during more than one month, it may be

stated therein that he or she has dwelt there one month and upwards. Provided also that at any place or Station where there is a Church, no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except in such Church, unless he shall have received a special license authorizing him to do so from and under the hand and seal of the Anglican Bishop of the Diocese, or from the Commissary of such Bishop. For such special license the Registrar of the Diocese shall be entitled to charge such additional fee as the same Bishop may sanction.

XII. The Minister of Religion to whom such notice shall have been delivered, if he shall be entitled to officiate in the Church in which it is intended to solemnize the said marriage, shall publish every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of the same Church. If such Minister of Religion shall not be entitled to officiate as a Minister in such Church, he shall at his option either return the said notice to the person delivering the same to him, or shall deliver the same to some other Minister entitled to officiate therein, who shall thereupon cause the same to be so published and affixed as aforesaid.

XIII. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion on receiving the notice prescribed in the eleventh Section shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own Office.

XIV. When one of the persons intending marriage (not being a widow or widower) is a minor, every such Minister as aforesaid who shall receive such notice, and who shall not forthwith return it to the person delivering the same under the twelfth Section shall, within twenty-four hours after the receipt by him thereof, send or cause to be sent by the Post, or

otherwise, a copy of such notice to the Marriage Registrar of the District.

XV. The Marriage Registrar of the District on receiving any such notice shall affix the same to some conspicuous place in his own Office.

Publication of such notice.

XVI. If there be more Marriage Registrars than one in any District, the Local Government shall appoint one of such Registrars to be Senior Marriage Registrar, and such notice as aforesaid shall be sent to such Senior Marriage Registrar, who, on receiving the same, shall, besides affixing it in the manner laid down in the last preceding Section, cause a copy thereof to be sent to each of the other Marriage Registrars in the same District, who shall likewise affix the same in their own Offices or Churches, as aforesaid.

Appointment of Senior Marriage Registrar.

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

Issue of certificate of notice given and declaration made.

Provido. Provided that no lawful impediment according to the law of England be shewn to the satisfaction of such Minister why such certificate should not issue, and the issue of such certificate shall not have been sooner forbidden in the manner hereinafter mentioned, by any person authorized in that behalf.

XVIII. When by such declaration it appears, or when it is otherwise known to such Minister of religion, that either of the persons intending marriage, not being a widower or widow, is a minor, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

In case of minority, certificate not to issue until fourteen days after receipt of notice.

**XIX.** Before any such certificate as aforesaid shall be issued by any such Minister, one of the persons intending marriage shall appear personally before such Minister, and shall make a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and when either or both of the parties, not being a widower or widow, is or are a minor or minors, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is or are no person or persons resident in India having authority to give such consent, as the case may be.

**XX.** The father, if living, of any minor not being a widower or widow, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, shall have authority to 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.

**XXI.** Every person whose consent to a marriage is required as aforesaid, is hereby authorized to prohibit the issue of the certificate by any Minister as aforesaid, at any time before the issue of such certificate, by notice in writing to such Minister, subscribed by the person so authorized with his name and place of abode, and his or her position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

**XXII.** If any such notice prohibiting the marriage shall be received by such Minister as aforesaid, he shall not issue his certificate and shall not solemnize the said marriage until he shall have examined into the matter of the said prohibition, and shall be satisfied that the person prohibiting the marriage is not authorized by law so to do, or until the said notice be withdrawn by the person who gave it.



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

Proceedings before issue of certificate in the case of Native Christians.

**XXIV.** The certificate to be issued by such Minister as aforesaid, may be in the form contained in the Schedule B to this Act annexed, or to the like effect.

Form of certificate.

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

After issue of certificate, marriage may be solemnized.

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

Certificate to be void if marriage be not solemnized within two months.

**XXVII.** Provided that whenever any marriage has been solemnized by a Minister of Religion in accordance with the provisions of Part I of this Act, it shall not be necessary in support of such marriage to give any proof in respect of the dwelling of the persons married, or of the consent of any person whose consent to such marriage is required by law, or of the notice of marriage, or of the certifi-

Proof of marriage in accordance with the provisions of Part I of this Act.

cate or the translation thereof respectively, or in respect of the hours between which the same may have been solemnized; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

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PART III.

*As to the Time for solemnizing Marriages.*

XXVIII. Every marriage solemnized in India from and after the commencement of this Act by any person who has received episcopal ordination, or by any Clergyman of the Church of Scotland, or by any Minister licensed under this Act to solemnize marriages, shall be solemnized between the hours of six in the morning and seven in the evening: Provided that this Section shall not apply to a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, from and under the hand and seal of the Anglican Bishop of the Diocese or his Commissary; and it is hereby declared that for such special license the Registrar of the Diocese shall be entitled to charge such additional fee as such Bishop may sanction: Provided also that this Section shall not apply to 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 shall have received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage shall so be solemnized, or from such person as the same Bishop shall have authorized to grant such license.

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PART IV.

*As to the Registration of Marriages in India.*

XXIX. All marriages solemnized in India from and after the commencement of this Act between persons, both or one of whom shall profess the Christian Religion, except marriages solemnized under the said Statute 14 and

Marriages with certain exceptions to be registered as hereinafter prescribed.

15 Vic., cap. 40, and the said Act V of 1852, shall be registered in the manner hereinafter prescribed: *Provido.* provided that no omission or defect in such registration shall invalidate any marriage not otherwise invalid.

XXX. Every marriage solemnized by a Clergyman of the Church of England shall be registered by the Clergyman solemnizing the same in the Register of Marriages of the Station or District in which the marriage shall be solemnized, according to the form contained in the Schedule C to this Act annexed.

Registration of marriages solemnized by Clergymen of the Church of England.

XXXI. Every Clergyman of the Church of England shall send four times in every year Returns in duplicate, authenticated by the signature of such Clergyman, of the entries in the Register of Marriages solemnized at or in any Station or District at which such Clergyman shall have any spiritual charge, to the Registrar of the Archdeaconry to which he shall be subject or within the limits of which such Station or District shall be situated. Such quarterly Returns shall contain all the entries of marriages contained in the said Register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be transmitted by such Clergyman within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one duplicate to the Secretary to the Local Government.

Quarterly Returns to Archdeaconry.

XXXII. 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 shall be solemnized; and such person shall forward Secretary to the Local Government, Returns

Registration and Returns of marriages solemnized by Clergymen of the Church of Rome.

of the entries of all marriages registered by him during the three months next preceding.

**XXXIII.** Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a Register of Marriages to be kept by him for the Station or District in which the marriage shall be solemnized, in the form prescribed in the thirtieth Section for marriages solemnized by Clergymen of the Church of England, and such Clergyman shall forward quarterly to the Secretary to Government, through the Senior Chaplain of the Church of Scotland in the territory subject to the Local Government, Returns similar to those prescribed in the thirty-first Section for Clergymen of the Church of England of all marriages solemnized by him.

**XXXIV.** After the solemnization of any marriage under this Act by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England nor of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, the person solemnizing the same shall forthwith register such marriage in duplicate—that is to say, in a Marriage Register Book to be kept by him for that purpose, according to the form contained in the Schedule D to this Act annexed, and also in a certificate attached to the Marriage Register Book as a counter-foil.

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

**XXXVI.** The person solemnizing the said marriage shall forthwith separate the certificate from the Marriage Register Book, and transmit it within one month from the time of the solemnization of such marriage 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 transmit all the certificates which he shall have received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government, together with the certificates from his own Marriage Register Book which he shall transmit under the twelfth Section of the said Statute 14 and 15 Vic., cap. 40, but distinct therefrom.

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

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

**XXXIX.** The person solemnizing any such marriage as is provided for in Part V of this Act, shall keep safely the said Register Book until the same shall be filled, or if he shall leave the District in which he solemnized the marriage before the said book is filled, shall make over the

Such certificate to be forwarded to Marriage Registrar, copied, and transmitted to Government.

Copies of certificates to be entered and numbered.

Registrar to add number of entry of copy to the certificate, and send same to Government.

Custody and disposal of Register Book of marriages solemnized under Part V of this Act.

same to the person who shall succeed to his duties in the said District, who shall keep safely the same, and shall make therein the entries by this Act required to be made in respect of any marriage solemnized by him within the said District; and the person having the control of the book at the time when it shall be filled, shall send the same to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government to be kept by him with the records of his Office.

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

XLI. Any person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any 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 who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and such person shall make the like marginal entry, attested in the like manner, in the certificate thereof; and in case such certificate shall have been already transmitted to the Secretary to the Local Government, such person shall make and transmit in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

**XLII.** 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 who shall have the custody for the time being of any Register of Marriages, or of any certificate or copies of certificate under this Act, shall at all reasonable times allow searches to be made of any Marriage Register Book, or of any certificate, or duplicate, or copies of certificate in his custody, and shall give a copy under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned: that is, for every search extending over a period of not more than one year the sum of one Rupee, and four annas additional for every additional year, and the sum of one Rupee for every single certificate.

**XLIII.** All fees received under the provisions of this Act by a Marriage Registrar or Secretary shall be accounted for and paid over by him to Government, and all fees received by a person solemnizing a marriage, not being a Marriage Registrar, may be retained by such person.

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

These provisions not to apply to Registers or certificates of certain marriages solemnized by Marriage Registrars.

**XLV.** Nothing contained in this Part shall apply to the Register or certificate of any marriage solemnized under the said Statute 14 and 15 Vic., cap. 40, or the said Act V of 1852.

Marriage Registrars to be Christians and may be appointed *ex-officio*.  
**XLVI.** Every Marriage Registrar hereafter appointed under the provisions of the said Act V of 1852 shall be a Christian, and may be so appointed either by name or as holding any office for the time being.

### PART V.

#### *As to the Marriage of Native Christians.*

Power to license persons to grant certificates of marriage between Native Christians.  
**XLVII.** And whereas it is expedient to make provision for the marriage of Native Christians to whom the provisions of the said Statute 14 and 15 Vic., cap. 40, and the said Act V of 1852 are found not to be suitable, it is further enacted that it shall be lawful for the Local Government or the Chief Commissioner of any Province, to issue a license to any person being a Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians. Any such license may be revoked by the Government or Chief Commissioner by whom it was granted; and every such grant or revocation shall be notified in the Official Gazette.

Certificate may be given without previous notice of marriage.  
**XLVIII.** It shall not be a necessary preliminary to the grant of a certificate by any person licensed under the last preceding Section, that any notice of marriage should have been given by either of the parties to such marriage, or that any certificate should have been issued of any notice having been given under the provisions of the said Act V of 1852 or otherwise; and every marriage between Native Christians as aforesaid applying for a certificate under this Part of this Act, shall be certified under this Part of this Act if the following conditions be fulfilled, and not otherwise:—

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



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

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

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

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

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

**XLIX.** When in respect to any marriage falling under this

On marriage (the conditions having been fulfilled), licensed person to grant a certificate thereof.

Part of this Act, the conditions prescribed in the last preceding Section shall have been fulfilled, it shall be the duty of the person licensed as aforesaid, in whose presence the said declaration shall have been made, to grant a certificate of such marriage on the application of either of the parties to such marriage on the payment of a fee of four annas. Such certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage, as conclusive evidence of the same marriage having been performed, and no evidence to the contrary shall be received in any such suit.

Marriages performed under the provisions of Section 48 to be valid.

**L.** All marriages performed between Native Christians as aforesaid, in accordance with the provisions of the forty-eighth Section, shall be valid.

**LI.** A Register Book of all marriages of which certificates

Register Book to be kept.

shall be granted under the forty-eighth Section shall be kept by the person granting such certificates in his own vernacular language. Such Register Book shall be kept according to such form as the Local Government or Chief Commis-

sioner shall from time to time prescribe, and true extracts therefrom duly authenticated shall be deposited at such places and at such times as the Local Government or Chief Commissioner shall direct.

LII. Every person licensed under this Act to grant certificates of marriage and who shall have the custody of a Marriage Register Book under the last preceding Section, shall at all reasonable times allow search to be made in such Book in his custody, and shall give a copy certified under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned: that is to say—for every search extending over a period not exceeding two years the sum of eight annas, and two annas additional for every additional year.

LIII. This Part of this Act shall not apply to marriages between Roman Catholics. But nothing herein contained shall be construed to invalidate any marriage contracted between Roman Catholics under the provisions of Part V of the said Act No. XXV of 1864.

Searches to be allowed in the Register Book.

Part V not to apply to Roman Catholics.

## PART VI.

### *As to Penalties.*

LIV. Whoever intentionally makes any false oath or declaration, or signs any false notice or certificate required by the said Statute 14 and 15 Vic., cap. 40, or the said Act V of 1852, or by this Act, for the purpose of procuring any marriage, shall be guilty of the offence described in the hundred and ninety-third Section of the Indian Penal Code, and on conviction shall be liable to the punishment prescribed in that Section.

LIV. Whoever forbids the issue by a Marriage Registrar of a certificate, by falsely representing himself or herself to be a person whose consent to the marriage is required by law, knowing such representation to be false, shall

Punishment for false oath, declaration, notice or certificate, for procuring marriage.

Punishment for forbidding the issue by a Marriage Registrar of a certificate by false representation.

be guilty of the offence described in the hundred and fifth Section of the Indian Penal Code, and shall on conviction be liable to the punishment prescribed in that Section.

LVI. Whoever, not being authorized under the sixth Section to solemnize a marriage shall, from and after the commencement of this Act, in the absence of a Marriage Registrar of the District in which such marriage is solemnized, knowingly and wilfully solemnize a marriage between persons, one or both of whom shall profess the Christian Religion, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine; or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years; or if the offender be an European or American, to penal servitude according to the provisions of Act 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.*)

LVII. Whoever shall, from and after the commencement of this Act, knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, 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, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to three years, and shall also be liable to fine.

LVIII. The provisions of the last preceding Section shall not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the

Punishment for a person not duly authorized solemnizing a marriage.

Punishment for solemnizing a marriage otherwise than between six A. M. and seven P. M. or without witnesses.

Section 57 not to apply to marriages solemnized under licenses.

morning by a Clergyman of the Church of Rome, when he shall have received the general or special license in that behalf mentioned in the twenty-eighth Section.

LIX. Any Minister of Religion licensed to solemnize marriages under this Act, who shall, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnize a marriage when one of the parties to such marriage, not being a widower or widow, is a minor, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to three years, and shall also be liable to fine. But the provisions of this Section shall not apply to marriages solemnized between Native Christians under the provisions of Part V of this Act.

LX. Whoever, being a Marriage Registrar appointed under the provisions of the said Act V of 1852, shall knowingly and wilfully issue any certificate for marriage, or solemnize any marriage under the same Act without publishing or affixing in some conspicuous place the notice of such marriage as directed by such Act, or after expiration of two months after a certificate in respect of a marriage shall have been issued by him, shall solemnize such marriage, or shall, without an order of a competent Court authorizing him to do so, solemnize any marriage when one of the persons intending marriage (not being a widow or widower) is a minor, before the expiration of fourteen days after the receipt of such notice as is required by the same Act, or without sending or causing to be sent by the Post or otherwise a copy of such notice of marriage to the Senior Marriage Registrar of the District, if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar, or shall issue any certificate, the issue of which shall have been prohibited as in this Act provided by any person authorized to prohibit the issue thereof, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

**LXI.** Whoever, being a person authorized under the provisions of this Act to solemnize a marriage, and not being a Clergyman of the Church of England solemnizing a marriage after due publication of Banns or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf, or not

being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church, or not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church, shall knowingly and wilfully issue any certificate for marriage under this Act, or solemnize any marriage between such persons as aforesaid, without publishing or causing to be affixed the notice of such marriage as directed in Part II of this Act, or after the expiration of two months after the certificate shall have been issued by him, or shall knowingly and wilfully issue any certificate for marriage, or solemnize a marriage between such persons, when one of the persons intending marriage, not being a widower or widow, is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending or causing to be sent by the Post or otherwise a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District; or shall knowingly and wilfully issue any certificate, the issue of which shall have been forbidden under this Act by any person authorized to forbid the issue; or shall knowingly and wilfully solemnize any marriage which shall have been forbidden by any person authorized to forbid the same, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to four years, and shall also be liable to fine.

**LXII.** Whoever, not being licensed to grant a certificate of marriage under Part V of this Act, shall grant such certificate intending thereby to make it appear that he is so licensed, shall be punished, with imprisonment of

Punishment for persons authorized under this Act, but not being Clergymen of the Churches of England, Scotland or Rome, solemnizing marriages without publication of notices, &c.

Punishment for unlicensed person pretending to grant certificate of marriage under Part V.

either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

**LXIII.** Whoever shall wilfully destroy or injure or cause to be destroyed or injured any such Register Book, or any part thereof, or any such authenticated extract therefrom as aforesaid, or shall wilfully insert or cause to be inserted any false entry in any such Register Book or authenticated extract, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to seven years, and shall also be liable to fine.

**LXIV.** Persons tried for offences punishable under this Act shall be tried under the provisions of the Code of Criminal Procedure by the Court of Session as defined in the same Code: Provided that no European British subject shall be liable to be tried for any offence punishable under this Act except before a Judge of the High Court. In every case in which an European British subject shall be charged before a Justice of the Peace or Magistrate at any place beyond the local limits of the ordinary original Civil jurisdiction of the High Court with any offence under this Act, such charge shall be investigated, and the committal and trial for such offence shall be made and held, according to the rules by which the Criminal Procedure of the High Court may from time to time be regulated.

**LXV.** Except as provided in the last preceding Section, the provisions of the Code of Criminal Procedure shall apply to the investigation and committal in all cases of charges under this Act: Provided that a summons shall ordinarily issue in the first instance, and that all offences punishable under this Act shall be bailable.

**LXVI.** The Supreme Court of Judicature in the Settlement of Prince of Wales' Island, Singapore and Malacca shall have power to try offences punishable under this Act and committed within the limits of such Settlement.

Punishment for destroying or falsifying Register Books.

Jurisdiction to try persons for offences punishable under this Act.

Code of Criminal Procedure applicable to investigations and committals under this Act.

Supreme Court of Straits' Settlement to try and punish offences under this Act.

ment. The charge for any such offence shall be investigated and the committals shall be made under the procedure by which such Court shall from time to time be regulated. The penalties (if any) imposed on persons charged as aforesaid shall correspond as nearly as may be with the penalties which might have been imposed on such persons had the Indian Penal Code been then in force in the said Settlement.

SCHEDULE A.—(See Section 11.)  
Notice of Marriage.

To the Reverend John Brown, a Minister of the Free Church of Scotland, at Calcutta.

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	Dwell- ing- place.	Length of Resi- dence.	Church, Chapel, or place of worship, in which the mar- riage is to be so- lemnized.	District in which the other party re- sides 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 sixth day of July, one thousand eight hundred and sixty-five.

(Signed) JAMES SMITH.

(The *Italics* in this Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another District).

SCHEDULE B.—(See Section 24.)

Registrar's Certificate.

I, the Reverend John Brown, Minister of the Free Church of Scotland at Calcutta in Bengal, do hereby certify, that on the sixth day of July 1865, 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 James Smith, 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 nineteen of "The Indian Marriage Act, 1865" has been duly made by the said (James Smith).

Date of notice entered	sixth	} The issue of this Certificate has not been prohibited by any person authorized to forbid the issue thereof.
July	1865.	
Date of certificate given		
twentieth	July 1865.	



Witness my hand, this *twentieth* day of *July* one thousand eight hundred and *sixty-five*.

(Signed) **JOHN BROWN,**  
*Minister of the Free Church of Scotland.*

This Certificate will be void unless the marriage is solemnized on or before the *twentieth* day of *September* 1865.

(The *Italics* in the Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another District).

SCHEDULE C.—(See Section 30.)  
 Form of Register of Marriages.

Quarterly Returns  
 of  
**MARRIAGES**  
 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 original and official

Quarterly Returns of Marriages within the Archdeaconry of { *Calcutta,*  
*Madras,*  
*Bombay,*

as made and transmitted to me for the Quarter commencing the *first* day of *October* ending the *thirty-first* day of *December*, in the Year of Our Lord *One Thousand Eight Hundred and Sixty-five*.

[Signature of Registrar.]

Registrar of the Archdeaconry of { *Calcutta,*  
*Madras,*  
*Bombay.*

**MARRIAGES** solemnized at { *Allahabad,*  
*Barrackpore,*  
*Bareilly,*  
*Calcutta, &c., &c.*



SCHEDULE D—(See Section 34).

MARRIAGE REGISTER BOOK.				CERTIFICATE OF MARRIAGE.			
No	WHEN MARRIED	NAMES OF PARTIES	Age	Condition	Rank or Profession	Residence at the time of marriage.	Father's Name and Surname.
Day	Month	Christian	Surname				
Day	Month	Year.	Christian	Surname.	Age		
			ON	WHEN MARRIED			
1	26th July 1865	James.. White.. 29 years Widower Carpenter	Agia Wm White	Agia	Widower Carpenter	Agia Wm. White.	Agia Wm. White.
		Martha Duncan 17 years Spinster	Agia John Duncan	Agia	Spinster	Agia John Duncan	Agia John Duncan
<p>MARRIED in the Free Church of Scotland Church, Agia</p> <p>JOHN FOUNG, Minister of the Free Church of Scotland.</p>				<p>MARRIED in the Free Church of Scotland Church, Agia</p> <p>JOHN FOUNG, Minister of the Free Church of Scotland.</p>			
<p>This marriage was solemnized between us .....</p> <p>{ James White } in the presence of us { John Smith }                  { Martha Duncan. } { John Green. }</p>				<p>This marriage was solemnized between us .....</p> <p>{ James White } in the presence of us { John Smith }                  { Martha Duncan. } { John Green. }</p>			

**ARMS ACT CONTINUANCE ACT.****ACT No. VI. OF 1865.**

[*Received the assent of the G. G. on the 22nd February 1865.*]

Continues Act XXXI, 1860, till 1st October 1866.

WHEREAS Act No. XXXI of 1860 is limited to expire on the first day of October 1865 ; and whereas it is expedient to continue such Act for a limited period ; It is enacted as follows :—

I. Act No. XXXI of 1860 shall continue in force until the first day of October 1866.  
Act XXXI of 1860 continued.

II. This Act may be cited as “The Arms’ Act Continuance Act, 1865.”

Short Title.

**GOVERNMENT FORESTS ACT.****ACT No. VII. OF 1865.**

[*Received the assent of the G. G. on the 24th February 1865.*]

1. Interprets the words Government Forests, Magistrate, Local Government.

2—5. Authorizes the Government to put jungle lands, &c., under provisions of this Act ; and (3) to make Rules for management, &c., of Forests, &c. ; which Rules (4) may provide for specified matters, that is, the preservation of Forests, &c., the regulation of the use of streams, &c. ; the safe custody and felling, &c., of timber ; and the regulation of the duties of Forest Officials, &c. ; (5) for the infringement of which rules, if not provided for by Act, Government may prescribe fine, &c.

6—7. Rules to have force of Law when confirmed by Governor-General in Council ; and (7) all implements used in infringement thereof and produce of, to be confiscated.

8—9. Empowers Police to arrest person and seize implements used in infringement ; such person (9) to be taken before Magistrate, &c.

10. Procuring act to be an offence like doing the act.

11—12. Empowers Magistrate to proceed to carry out confiscation ; and (12) makes vexatious proceedings for confiscation punishable.

13. Procedure in cases under this Act to be according to Code of Criminal Procedure.

14—15. Vests the right by confiscation in Her Majesty; but (15) Government may call for proceedings and order restitution of property, or remission of the penalty, &c.

16—17. Limits actions for acts done under this Act to three months, and requires one month's previous notice of action; and (17) limits the right to proceed for offences under this Act to six months.

18. Act extends to Bengal, North-Western Provinces, and Punjab, and may be extended by Madras and Bombay Governments to their Territories.

19. Act to be called the "GOVERNMENT FORESTS ACT OF 1865."

WHEREAS it is expedient that Rules having the force of law should be made from time to time for the better management and preservation of Forests wherein rights are vested in Her Majesty for the purposes of the Government of India; It is enacted as follows:—

Preamble.

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

"Government Forests" shall mean such land covered with trees, brushwood or jungle, as shall be declared in accordance with the second

Section of this Act to be subject to its provisions.

"Magistrate" shall mean the Chief Officer charged with the Executive administration of a district or place in criminal matters by whatever

designation such Officer is called, and shall include any person invested by the Local Government with the powers of a Magistrate or of a subordinate Magistrate as defined in the Code of Criminal Procedure, with a view to the exercise by him of such powers under this Act.

And in every part of British India in which this Act operates, "Local Government" denotes the persons authorized to administer Executive

Government in such part, and includes the Chief Commissioner of any part of British India under the immediate administration of the Governor-General of India in Council whenever such Chief Commissioner is authorized by the

Governor-General in Council to exercise the powers of a Local Government under this Act.

II. The Governor-General of India in Council within the Provinces under his immediate administration, and the Local Governments within the Territories under their control, may, by notification in the Official Gazette, render subject to the provisions of this Act, such land covered with trees, brushwood, or jungle, as they may define for the purpose by such notification; provided that such notification shall not abridge or affect any existing rights of individuals or communities.

III. For the management and preservation of any Government Forests or any part thereof in the Territories under their control, the Local Governments may, subject to the confirmation hereinafter mentioned, make Rules in respect of the matters hereinafter declared, and from time to time may, subject to the like confirmation, repeal, alter, and amend the same. Such Rules shall not be repugnant to any law in force.

Local Governments may make Rules for management and preservation of Forests, and for regulating the conduct of persons employed on them.

IV. Rules made in pursuance of this Act may provide for the following matters:—

*First.*—The preservation of all growing trees, shrubs, and plants, within Government Forests or of certain kinds only—by prohibiting the marking, girdling, felling, and lopping thereof, and all kinds of injury thereto, by prohibiting the kindling of fires so as to endanger such trees, shrubs, and plants, by prohibiting the collecting and removing of leaves, fruits, grass, wood-oil, resin, wax, honey, elephants' tusks, horns, skins, and hides, stones, lime, or any natural produce of such Forests; by prohibiting the ingress into and the passage through such Forests, except on authorized road and paths; by prohibiting cultivation and the burning of lime and charcoal, and the grazing of cattle within such Forests.

*Second.*—The regulation of the use of streams and canals passing through or coming from Government Forests or used for the transport of timber or other the produce of such Forests—by prohibiting the closing or blocking up for any purposes whatsoever of streams or canals used or required for the transport of timber or Forest produce ; by prohibiting the poisoning of or otherwise interfering with streams and waters in Government Forests in such a manner as to render the water unfit for use ; by regulating and restricting the mode by which timber shall be permitted to be floated down rivers flowing through or from Government Forests and removed from the same ; by authorizing the stoppage of all floating timber at certain Stations on such rivers within or without the limits of Government Forests for the purpose of levying the dues or revenues lawfully payable thereon ; by authorizing the collecting of all timber adrift on such rivers, and the disposal of the same belonging to the Government.

*Third.*—The safe custody of timber the produce of Government Forests—by regulating the manner in which timber, being the produce of Government Forests, shall be felled or converted ; by prohibiting the converting or cutting into pieces, or burning of any timber, or the disposal of such timber by sale or otherwise, by any person not the lawful owner of such timber, or not acting on behalf of the owner ; by regulating the manner in which property-marks shall be affixed to timber and other Forest produce in Government Forests ; by prohibiting the affixing of property-marks to timber by any person not the owner of the timber or acting on behalf of the owner, so long as such timber shall be within certain territorial limits, or shall be in transit on certain rivers ; by prohibiting within certain territorial limits the effacing or alteration of property-marks on timber ; by prohibiting, within such limits, the use of the property-marks employed by the Government, or the fraudulent use of the property-marks of private persons ; by requiring the registry within certain territorial

limits of implements for affixing property-marks on timber ; by directing the levying of fees for the registration of such implements.

*Fourth.*—The regulation of the duties of the Government Officers and establishments charged with the management and conservancy of Government Forests and with the levy of Forest dues and revenues—by prohibiting their engaging in any employment or office other than their duties as public servants ; by fixing penalties for the wilful neglect of the Rules laid down for the guidance of such persons in all matters connected with the guarding of the boundaries of the Forests, the marking, girdling, or felling of trees, the marking and passing of timber, the reporting and preventing of offences against the Rules made in pursuance of this Act and the collecting of Forest dues or revenues.

V. In cases where the penalty of confiscation is not provided by this Act, the Local Government may prescribe punishments for the infringement of Rules made in pursuance thereof, by fine not exceeding five hundred rupees, and in default of payment of such fine may provide for the imprisonment of the offender for such term as is mentioned in the sixty-seventh Section of the Indian Penal Code.

VI. Such Rules when confirmed and published in the Official Gazette shall have the force of law.

VII. All implements used in infringing any of the Rules made in pursuance of this Act, and all timber or other Forest produce, removed or attempted to be removed, or marked, converted, or cut up contrary to such Rules, shall be confiscated.



VIII. Any Police Officer or person employed as an Officer of Government to prevent infringement of the Rules made in pursuance of this Act may arrest any person infringing any of such Rules, and may seize any implements used in such infringement, and any timber liable to confiscation under this Act.

IX. Any person arrested on the ground that he has committed an infringement of such Rules shall forthwith be taken before a Magistrate, who may, if he see reasonable cause, order such person to be detained in custody until the case shall have been disposed of.

X. Where the doing of any act is made punishable by this Act, or by any of the Rules to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner.

XI. When any timber or other property shall be seized as liable to confiscation under this Act, any Magistrate or Officer empowered to enforce penalties under this Act within the district or division of a district wherein the same may be seized, may, upon information, summon the person in possession of such timber or other property, and upon his appearance, or in default thereof, may examine into the cause of the seizure of such timber or other property, and may adjudge the same to be confiscated and sold on account of the Government.

XII. Any Police Officer or Officer of Government who shall vexatiously and unnecessarily seize the goods or chattels of any person under the pretence of seizing property liable to confiscation, or who shall vexatiously and unnecessarily arrest any person, or

commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred Rupees, or to imprisonment of either description as defined in the Indian Penal Code for a term not exceeding three months.

XIII. All fines and penalties under the Rules made in pursuance of this Act shall be enforced by a Magistrate in the manner prescribed by the Code of Criminal Procedure, and the Rules therein contained for the trial of cases and for appeals shall be applicable to confiscations adjudged under this Act.

XIV. When the confiscation of any property shall be adjudged under the last preceding Section, the same shall thereupon belong to and vest in Her Majesty, and a Warrant shall be issued by the Court to a Police Officer directing him to hold the property confiscated at the disposal of the Local Government.

XV. When any confiscation or penalty shall be adjudged under this Act, the Local Governments may, within three months after final judgment, call for the proceedings of the case, and, if they shall see cause, may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof, and direct that the offender be discharged.

XVI. No suit or other proceedings shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit or other proceeding and of the case thereof; nor after the expiration of three months from the accrual of the cause of of suit or other proceeding.

XVII. No charge of an offence under this Act shall be instituted except within six months after the commission of such offence.

**XVIII.** This Act shall extend to all the Territories under the immediate administration of the Government of India and under the Governments of Bengal, the North-Western Provinces, and the Punjab; and it shall be lawful for the Governors in Council of Madras and Bombay respectively, by notification in the Official Gazette, to extend this Act to the Territories under their respective Governments.

**XIX.** This Act shall come into operation on the first day of May 1865, and may be cited as "The Government Forests' Act, 1865."

Extent of Act.  
Commencement of Act.  
Short Title.

### BENGAL—SHERIFF'S INDEMNITY ACT.

#### ACT No. VIII OF 1865.

[Received the assent of the G. G. on the 24th March 1865.]

Recites expediency of making valid certain arrests and indemnifying the Sheriff.

1—2. Makes valid all arrests in execution in the High Court, as if in accordance with Code of Civil Procedure; and (2) gives immunity from all actions on ground thereof.

3. Authorizes Governments of Madras and Bombay to extend the Act to arrests, &c., in their High Courts.

**WHEREAS** it is expedient to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original Civil Jurisdiction, and to indemnify the Sheriff of the said High Court and others in respect of such imprisonment; It is enacted as follows:—

**I.** All arrests made subsequently to the establishment of the High Court of Judicature at Fort William in Bengal and before the passing of this Act, in execution of any process issued by the said Court in the exercise

Arrests, &c., heretofore made to be deemed good, though not in accordance with the Civil Procedure Code.

of its ordinary original Civil Jurisdiction, and the detention and imprisonment of all persons so arrested, shall for all purposes be deemed to be and always to have been as valid and effectual as if such arrests, detentions, and imprisonments had been in accordance with the provisions of the Code of Civil Procedure.

II. No suit or proceeding shall be maintained in any Court on the ground that any such arrest, detention, or imprisonment as referred to in the preceding Section and thereby made valid and effectual, was illegal or invalid by reason of its not having been in accordance with the said Code of Civil Procedure, or of the omission of the Sheriff or Deputy Sheriff of the said High Court to conform to any of the provisions of the said Code.

III. The Governor in Council of Fort Saint George, and the Governor in Council of Bombay, may, by an order to be published in the Official Gazettes of Madras and Bombay respectively, extend this Act so as to apply to arrests, imprisonments, and detentions under process issued by the High Court of Judicature at Madras, and the High Court of Judicature at Bombay respectively, on or before the first day of March 1865. When so extended this Act shall in all respects apply to each of the said High Courts in the same manner as if the names of such Courts had appeared in this Act wherever the name of the High Court of Judicature at Fort William in Bengal appears.

Extension of the Act to the High Courts of Madras and Bombay.

#### REGISTRATION OF ASSURANCES.

#### ACT No. IX. OF 1865.

[Received the assent of the G. G. on the 7th March 1865.]

Recites expediency of amending Act XVI, 1864.

- 1, 2, 3, 6. Amends Act XVI, Section 10, by addition of words; and (2) Section 13 by addition of a Proviso, saving from operation of Act shares

of Joint Stock Companies having immoveable property ; and (3) repeals Act XVI, Section 25 ; and (6) Section 40.

4. Provides for registration of instruments affecting immoveable property situate in more Districts than one.

5. Makes valid Powers of Attorney not executed according to Act XVI, Section 28, on certain conditions.

6. *Supra.*

7. Directs that Abstracts of instruments affecting immoveable property registered with Deputy Registrars shall be forwarded to District Registrars.

8. Empowers Registrar General to appoint the District Registrar to act for him during his absence.

9. Makes this Act part of Act XVI, 1864.

WHEREAS it is expedient to amend Act No. XVI of 1864

Preamble. *(to provide for the Registration of Assurances)* ; it is enacted as follows :—

I. The second sentence of the tenth Section of Act No. XVI of 1864 shall be read as if the words “ or any other person whom the Registrar General may think proper to appoint ” were inserted after the words “ Civil jurisdiction of the District.”

II. The thirteenth Section of the said Act shall be read as if the following proviso formed part thereof: Provided also that the provisions of this Section shall not apply to any instrument relating to shares in a Joint Stock Company notwithstanding that the assets of such Company shall consist in whole or in part of immoveable property.

III. The twenty-fifth Section of Act No. XVI of 1864 is hereby repealed.

IV. Every instrument affecting immoveable property situate in more Districts than one may be presented for registration to the District Registrar of any District in which any part of the property is situate, and it shall be the duty of such Registrar to register the instrument and to forward a copy thereof endorsed with an attestation

Addition to tenth Section of Act XVI of 1864.

Addition to thirteenth Section of said Act.

Act XVI of 1864, Section 25, repealed.

Registration of instruments affecting immoveable property situate in more than one District.

stating the date on which it was registered and its number in his Register Book to the District Registrar of every District in which any other part of such property is situate, as well as to the Deputy Registrars subordinate to himself within the limits of whose jurisdiction any part of the property is situate. The District Registrar on receiving the copy shall forward a copy of the same and of the endorsement on the instrument to the Deputy Registrars subordinate to him within the limits of whose jurisdiction any part of the property is situate. Every District Registrar and Deputy Registrar receiving such copy as above shall register the same in the same manner as if the instrument had been presented to him in the first instance for registration.

V. Every power of attorney not duly executed or attested in compliance with the terms of the twenty-eighth Section of Act XVI of 1864 shall, at any time within three months after the passing of this Act (but not afterwards), be deemed to be a power duly executed and attested within the meaning of the same Section, if the Registrar General, or in his absence the Deputy Registrar General, after making such enquiry as he shall think fit, shall have certified upon such power of attorney that he is satisfied with the execution thereof, and that, in his opinion, it should be taken as a power duly executed and attested as aforesaid: Provided that this Section shall not apply to any case in which the person who executed the power of attorney shall be still in India.

Act XVI of 1864,  
Section 40, repealed.

VI. The fortieth Section of Act No. XVI of 1864 is hereby repealed.

VII. An abstract of every original instrument affecting immoveable property registered in the office of any Deputy Registrar shall, with an endorsement showing the date on which it was registered and its number in the Register Book of such Deputy Registrar,

Abstracts of instruments affecting immoveable property registered by Deputy Registrars to be forwarded through District Registrars to General Register Office.

be forwarded in duplicate within seven days from such date, to the District Registrar, who shall forthwith forward one of such duplicates to the General Register Office, and shall retain the other in his own office, and enter it in a Book corresponding with the Book No. 1, 2, 3, or 4 as described in the fifty-sixth Section of the said Act No. XVI of 1864.

VIII. During the absence on duty of the Registrar General from the place where the General Register Office is established, it shall be lawful for him to appoint the District Registrar of such place, or, with the sanction of the Local Government, such other person as he shall think fit, to perform the duties of the Registrar General under the twenty-sixth and twenty-seventh Sections of the said Act. A District Registrar so appointed as aforesaid shall perform such duties in addition to his own duties as District Registrar. During such absence as aforesaid, such District Registrar or other person so appointed as aforesaid shall be styled the Deputy Registrar General, and may, in registering any instrument under the said twenty-sixth Section, use the Seal of the Registrar General.

Appointment of Deputy Registrar General to perform duties of Registrar General under Sections 26 and 27 of Act XVI of 1864 during his absence on duty.

IX. This Act shall be read and taken as part of the said Act No. XVI of 1864.

This Act to be construed with Act XVI of 1864.

## THE INDIAN SUCCESSION ACT, 1865.

## ACT NO. X OF 1865.

[Received the assent of the G. G. on the 16th March 1865.]

Recites expediency of amendng and defining the Law of Intestate and Testamentary Succession.

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PART I.—*Preliminary.* 1—4.

1—3. Names the Act. (2) Declares it to be the law for British India in cases of Intestate or Testamentary Succession; and (3) interprets words of Number and Gender, and the words, Person, Year and Month, Immoveable Property, Moveable Property, Province, British India, District Judge, Minor and Minority, Will, Codicil, Probate, Executor, Administrator, Local Government, High Court.

4. Deprives marriage in itself of all effect in vesting or creating any incapacity in respect of the right of property.

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PART II.—*Of Domicile.* 5—19.

5. Succession to immoveable property is regulated by the Law of the place where the property is situated, to moveable by the Law of place of domicile, &c. Illustrations.

6. A person can have only one domicile, &c.

7—10. Defines domicile of origin of legitimate child, and posthumous child, and (8) illegitimate child; and (9 and 13) its duration; and (10) the mode of acquiring a new domicile. Explanation.

11. Establishes special mode of acquiring a domicile in India.

12. Representatives of Foreign Government do not acquire a domicile by residence, nor their families or servants.

13. *Supra.*

14—17. The domicile of minor follows that of parent, and (15 and 16) of woman by marriage that of husband, unless judicially separated.

18. Insane person can acquire a new domicile only by following that of another person.

19. In the absence of proof of other domicile succession to moveable property is regulated by Law of British India.

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PART III.—*Of Consanguinity.* 20—24.

20—23. Consanguinity is the relationship of persons from the same stock; it is (21) lineal when it comes in a direct line as from father and grand-



father ; collateral (22) when it comes remotely from the same stock, as from the same great grandfather, but immediately from different stocks ; and (23) for the purpose of succession relationship is the same, whether through the mother or father, or be of the full or half blood, and children born after father's death have the same relationship.

24. Explains the Table of Consanguinity.

PART IV.—*Of Intestacy.* 25—28.

25—28. A man is intestate as to all property on which his Will does not operate ; and (26) such property devolves according to the following rules, (27) in case of leaving a widow, &c., and (28) of leaving no widow, &c.

PART V.—*Of the Distribution of an Intestate's Property.* 29—42.

(a) *Where he has left or (b) not left lineal descendants.*

29. Establishes rules of distribution after deducting widow's share among lineal descendants ; if (30) lineals be a child or children ; if (31) a grandchild or grand-children ; or (32) great grand-children or more remote ; or (33) lineals of more remote degree, &c. ; or (34) if no lineal descendants, but (35) a father ; or (36) a mother and brothers, &c. ; or (37) a mother and brothers, &c., and children of deceased brother ; or (38) a mother and no brothers, &c., but brother's children ; or (39) mother alone surviving ; and (40) if neither lineal descendants nor father or mother, nor (41) also brother or sister ; and (42) abolishes the practice of hotchpot.

PART VI.—*Of the effect of Marriage and Marriage Settlements on Property.* 43—45.

43—44. Husband and wife respectively to have the same rights in regard to the property of the other dying intestate : and (44) same rule applies if person not domiciled in India marries in India a person domiciled there.

45. Minor's property may be settled on marriage, with approbation of father, &c.

PART VII.—*Of Wills and Codicils.* 46—49.

46. Every person of sound mind and not a minor may make a Will. Explanations, 1 as to married women ; 2 as to deaf and dumb ; 3 insane persons ; 4 as to incapacity from illness, &c.

47. For appointment of Testamentary Guardian.

48. As to Wills caused by fraud, &c.

49. A person competent to make is competent to revoke or alter a Will.

PART VIII.—*Of the Execution of Wills.* 50—51.

50—51. Must be by signature or mark by testator or by his direction in his presence, so placed as to show intention, &c.: and must be attested by two witnesses, &c.; and (51) writings referred to in Will may be read as part of the Will.

PART IX.—*Of Privileged Wills.* 52—53.

52—53. Defines Privileged Wills, *i. e.* Wills of soldiers employed in an expedition, &c., and (53) directs what making will constitute such a Will.

PART X.—*Of the Attestation, Revocation, Alteration and Revival of Wills.* 54—60.

54—55. Bequest to attesting witness or his wife or husband void; but attestation to stand good. Explanation; (55) and interested witness of a Will not disqualified to prove it.

56—58. Marriage is revocation of Will when, except Will under a Power; and (57) unprivileged Will revoked only by marriage, or new Will, or tearing it up, &c.; and (58) obliteration, interlineation in Will after execution to have what effect.

59—60. Privileged Will may be revoked in same manner as unprivileged Will, and (60) shall only be revived by re-execution, or Codicil, &c.

PART XI.—*Of the Construction of Wills.* 61—98.

61. All that is required in the wording of a Will is that it makes known the intention of the Testator; and (62) the Court may make enquiry into facts, to any extent necessary to apply the intention; and (63) mistakes in names, &c., not to defeat intention; and (64) context may supply defects of expression; and (65) if thing can be identified, partially inapplicable description may be rejected; and (66) limits the application of this rule, and words liable to rejection may be considered as struck out of Will; and (67) evidence may be taken to apply unambiguous words admitting of several applications; but (68) not to apply patent ambiguity; and (69) the meaning of any Clause is to be collected from the entire Will, &c.; *e. g.* (70) general words may be construed in a more restrictive and restricted words in a more general sense; and (71) of two meanings that is to be preferred which has some effect; and (72) no part is to be rejected; and (73) the same words every where to be interpreted in same sense; and (74) intention to prevail partially rather than not at all; and (75) of parts irrecon-

cilable the last is to prevail ; and (76) what is void for uncertainty ; and (77) description of subject of gift to apply to property at time of death ; and (78) general words of description to include all property coming within the description, &c. ; and (79) if power of appointment is not exercised, property to go in equal shares to all within the power ; and (80) as to bequests to "heirs," "right heirs," "relations," "nearest relations," "family," "kindred," "nearest of kin," "next of kin" ; and (81) "representatives," "legal representatives," "personal representatives," "executors or administrators," &c. ; and (82) the whole interest to pass if not restricted ; and (83) as to alternative bequests ; and (84) as to bequests such as to "A and his children," "A and his brother," &c. ; and (85) to persons under a general description ; and (86) on the construction of the terms "children," "grand-children," &c., and such words include a child in the womb, if afterwards born ; and (87) words of relationship apply only to legitimate relations ; and (88) as to the operation of two bequests to same person ; and (89) as to residuary legacies ; and (90) the property within them ; and (91) as to the time of legacies vesting ; and (92—98) the lapse of legacies and the disposal of lapses.

PART XII.—*Of Void Bequests.* 99—105.

99. When void for misdescription of legatee ; and (100) when for non-existence of legatee, &c., &c. ; and (101 and 102) when the limitations extend to beyond a life, and the minority of next taker ; and (103) void if contingent on void bequests taking effect ; and (104) bequests for accumulation of interests not to take effect ; and (105) restricts bequests to charitable uses, if testator has near relations specified.

PART XIII.—*Of the Vesting of Legacies.* 106—108.

106. When to vest, if payment, &c., is postponed ; (107) if payment, &c., is contingent ; (108) if to a class, on members attaining specified age.

PART XIV.—*Of Onerous Bequests.* 109—110.

109. If legacy is accepted burden is accepted ; but (110) of separate and independent legacies, an onerous one may be refused and the other accepted.

PART XV.—*Of Contingent Bequests.* 111—112.

111. Limits the time within which contingency must happen for contingent legacy to take effect ; and (112) qualifies the contingency when it relates to persons surviving.

PART XVI.—*Of Conditional Bequests.* 113—124.

113—114. Bequest void, if condition be impossible; or (114) contrary to law, &c.

115—116. Substantial performance of condition precedent sufficient; and (116) if bequest contingent on failure of prior condition, failure in manner contemplated not necessary, unless (117) by Will, manner of failure be essential.

118—119. Makes bequests over subject to rules in Sections 107 to 114 and 116, 117; and (119) in bequests over on condition, the condition must be strictly fulfilled.

120. Invalidity of ulterior bequest does not affect the original bequest.

121. Bequest may be made to become void on condition subsequent; provided (122) the condition be a legal one; and (123) legatee not to have benefit of legacy over on condition, if he himself makes the condition impossible, &c.; and (124) conditions to happen in specified time, must happen within the time.

PART XVII.—*Of Bequests with directions as to application or enjoyment.* 125—127.

125—127. In absolute bequests, directions as to application or enjoyment, or (126) mode of benefit to legatee are void; but (127) if bequests be for several distinct purposes, as to some of which it cannot take effect, the bequest so far fails.

PART XVIII.—*Of Bequests to an Executor.* 128.

128. Legatee named as an Executor shall not take the legacy, unless he proves the Will or act.

PART XIX.—*Of Specific Legacies.* 129—136.

129—133. Defines what is a Specific Legacy and what not; and (130—133) illustrate the definition.

134. Specific legacy to be retained in specific form, and (136) not to abate with general legacies in case of deficiency of assets, &c.

135. Property not specifically bequeathed to be sold and proceeds invested, &c.

PART XX.—*Of Demonstrative Legacies.* 137—138.

137. Defines what is a Demonstrative Legacy; and (138) provides for payment, if to come out of fund specifically bequeathed.

PART XXI.—*Of Ademption of Legacies.* 139—153.

139. Explains Ademption; (140) does not take effect on demonstrative legacies; but (141—153) does take effect when, in cases explained of specific legacies, &c. See Section 166.

PART XXII.—*Of the Payment of Liabilities' in respect of the subject of a Bequest.* 154—157.

154. Legatee takes specific legacy subject to burden upon it, when; but (155) testator's title to thing specifically bequeathed to be completed at expense of estate; and (156) as to charge of rent, and (157) of call on share or stock.

PART XXIII.—*Of Bequests of Things described in General Terms.* 158.

158. Thing to be purchased for Legatee by Executor.

PART XXIV.—*Of Bequests of the Interest or Produce of a Fund.* 159.

159. Bequest of the interest, &c., of a Fund, will pass the Fund, when.

PART XXV.—*Of Bequests of Annuities.* 160—163.

160—163. Annuity created by Will, is for life, unless limited; and (161) if to be provided for out of property, Legatee may have either the property or annuity; and (162) annuity to abate, when; but (163) annuity to be satisfied before residuary.

PART XXVI.—*Of Legacies to Creditors and Portioners.* 164—166.

164—166. Legacy to a Creditor not to be adeemed in satisfaction of debt, except when; and (165) legacy to child to be in addition to portion, except when; and (166) bequest not to be adeemed by subsequent settlement.

PART XXVII.—*Of Election.* 167—177.

167—169. Under what circumstances election must be made; and (168) lays down rule; and (169) explains extent of rule.

170—172. A bequest for a man's benefit operates as a bequest to himself; but (171) election need not be made, if no direct benefit be

taken; and (172) person taking in one character a benefit may elect in another character to take in opposition to the Will.

173—176. As to what constitutes an election, and as to constructive election.

177. A person under disability not put to elect till disability ceases.

PART XXVIII.—*Of Gifts in contemplation of Death.* 178.

178. May be made of moveable property, and defines such gifts, which are resumable, or fail, when.

PART XXIX.—*Of Grant of Probate and Letters of Administration.* 179—207.

179. Executor or Administrator is legal representative, and all the deceased's property vests in him.

180—188. Probate may be issued on copy of Will if originally proved in foreign jurisdiction, but (181) can be granted only to Executor; whose appointment (182) may be express or by necessary implication; and (183) cannot be granted to a Minor; but (184) may be granted to several; and (185) may be granted of Codicil afterwards, when, &c., and (186) if Probate be to several, the representative survives; and (187) without Probate or Letters of Administration no right under Will can be established; and (188) Probate establishes the right of the Executor from the death of Testator.

189—192. Letters of Administration not to be granted to Minor, &c.; and (190) no right to property of Intestate can be established without Letters, &c.; and (191) Letters granted take effect retrospectively from death, &c.; except (192) as to intermediate acts to disadvantage of estate.

193—195. As to grant of Letters of Administration if Executor has not renounced; and (194) as to how Executor may renounce; and (195) if he renounces or does not accept, &c., Letters of Administration may be issued.

196—199. If no Executor be appointed by Will, Probate may be granted to residuary Legatee, &c., and (197) if he has a beneficial interest his representative may succeed him; and (198) as to how in case there be neither Executor nor residuary Legatee, &c., but (199) Letters not to be granted to Legatee except residuary, till after citation of next of kin.

200—207. Grant of Letters of Administration in case of intestacy may be as follows; (201) *viz.* to widow, unless disqualified, &c.; either (202) with or without other person who would be entitled if there were no widow; and (203) if no widow, to person or persons entitled by rules for distribution; and (204) persons standing in equal degree are equally entitled to administration; and (205) husband has same right of administration in

regard to wife's estate as wife has to husband's; and (206) may be granted to creditor when; and (207) these rules to be followed, though person interested be domiciled where the Law of Succession differs.

**PART XXX.—Of Limited Grants. 208—234.**

208—234. Of copy, in case of loss of original Will; and (209) in case of no copy existing; or (210) of Will being withheld adversely; or (211) of Will simply not forthcoming; and (212) to the Attorney of absent Executor; and (213) same as to Letters of Administration; if (214) no person present is equally entitled; and (215) grant may be to guardian of Minor; until (216) Minor be 18; and (217) may be to Committee of Lunatic Executor, &c.; and (218) Letters of Administration, &c., may be granted for special purpose; as pending suit touching the validity of Will; and (219—220) for purpose limited by Executor; or (221) as to property limited; or (222) limited to a suit; and (223) fresh may be granted after twelve months' absence of original grantee; and (224) whenever necessary for preservation of property; and (225) may for reasons be granted to other than the person ordinarily entitled; and (226 and 227) may be granted with an exception whenever the nature of the case requires; and (228) when made with exception, Probate or Administration of the rest may be granted to person ordinarily entitled; and (229) on death of Executor a new representative must be appointed; and (230 and 231) same rules as to estates not fully administered: and (232) errors, &c., in names, &c., in grants, &c., may be corrected; and (233) grant for Codicil subsequently discovered may be added; and (234) for just cause grant, &c., may be revoked.

**PART IXXX.—Of the Practice in granting and revoking Probates and Letters of Administration. 235—264.**

235—243. Gives District Judge full jurisdiction for granting, &c., Probates, &c., (236) as in Civil Suits; and (237) to order production of testamentary papers, &c.; and (238) procedure to be, as nearly as can be, according to Act VIII, &c.; and (239) before Probate, &c., may interpose for protection of property; and (240) Probate, &c., may be granted in the district in which deceased resided or left property; and (241) gives Judge a discretion as to granting or refusing; and (242) Probate, &c., shall give a conclusive title as against all debtors, &c., to the estate; and (243) shall be granted if applied for as prescribed by this Code.

244, 245—248. Application for Probate shall be by Petition, with the Will annexed, &c.; and (245) a translation of it, verified, (see also 248) if not in the English language.

246—249. Application for Letters of Administration to be by Petition, stating what facts, and (247) verified, how; and (249) false verification to be punished under Indian Penal Code.

250. Empowers District Judge with reference to Petitions, to require further evidence on, and issue Citations, &c.

251—253. Authorizes Caveats against grant, in (252) what form; and (253) after Caveat no proceeding to be taken without notice to Caveator.

254—255. In what form grant of Probate shall be, and (255) in what form Letters of Administration.

256—257. Administration Bond with sureties to be entered into; which (257) may be assigned.

258. Neither Probate to be granted till seven, nor Letters of Administration till fourteen, clear days after death.

259. Wills to be filed, &c.

260. Grantee of Probate or Letters alone to represent the deceased.

261. In case of litigation respecting grant proceedings to be in form of a regular suit.

262. Revocation of Probate or Letters not to affect validity of payments made under such Probate, &c.

263—264. Gives an appeal to High Court against all acts of District Judge, &c.; and (264) gives High Court concurrent Powers with District Judge.

PART XXXII.—*Of Executors of their own wrong.* 265—266.

265—266. Defines who is; and (266) makes him accountable to rightful executor, &c.

PART XXXIII.—*Of the powers of an Executor or Administrator.*  
267—275.

267—272. Defines power of Executor, &c., to sue for causes of action which survive; and (268) rights and liabilities of, as to demands; and states exception; and (269) his power as to property of deceased; and (270) makes all purchases of property of deceased by himself voidable, &c.; and (271) declares the powers of executors to be several; and (272) to survive.

273—275. Administrator of effects unadministered; and (274) administration during minority; and (275) married woman as Executor or Administrator, have all the powers of ordinary Administrator or Executor.

PART XXXIV.—*Of the Duties of an Executor or Administrator.*  
276—291.

276—290. Defines the duties of an Executor as to funeral; and Administrator (277) as to filing Inventory and Account, (278) as to realiza-



tion of property and debts ; as to (279) order of payment of charges, &c. ; (280) and expenses of Probate, &c. ; (281) and of servants' wages ; and (282) of creditors ; and how (283) when not domiciled in India ; and (284) when last mentioned creditor has received part payment out of real estate ; and (285) debts of every kind to be paid before legacy ; and (286) legacy need not be paid without indemnity against contingent liabilities if there are any ; and (287) legacies to abate equally, if estate insufficient to pay all in full ; but (288) specific legacy not to abate, except when ; and (289) demonstrative legacy to have preference ; but (290) an abatement shall be made as between specific legacies.

291. As to what shall be treated as general legacies for purpose of abatement.

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PART XXXV.—*Of the Executor's Assent to a Legacy.* 292—297.

292—296. Executor's assent necessary to complete title to legacy ; and (293) his assent will divest his interest as executor, except when, and how assent may be, and (294) may be conditional ; and (295) his assent necessary to a legacy to himself, &c. ; and (296) after assent legacy takes effect from death of testator.

297. Executor not bound to pay, &c., legacy till a year after death.

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PART XXXVI.—*Of the Payment and Apportionment of Annuities.* 298—300.

298—300. Annuity commences from death of Testator, if no other time fixed ; and (299) due at end of first quarter, if quarterly ; and (300) if time fixed for first payment, subsequent ones follow on the anniversary.

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PART XXXVII.—*Of the Investment of Funds to provide for Legacies.* 301—308.

301—304. For payment of life annuity sum must be invested, and how ; and (302) for specific legacy, how ; and (303) Government annuity shall be purchased, when ; and (304) when secured in the hands of residuary legatee.

305—307. If residue is given for life, uninvested part must be invested ; and (306) in such securities as Will specifies ; (307) at times, in discretion of executor, &c. ; and (308) as to what is to be done, if legatee be a minor.

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PART XXXVIII.—*Of the Produce and Interest of Legacies.*  
309—315.

309—315. Legatee of specific legacy entitled to produce from testator's death ; and (310) residuary legatee same as to residuary fund ; if (311) no

time fixed, interest runs from end of one year after death; or (312) from time fixed; at rate (313) of 4 per cent.; and (314) interest on arrears does not run within first year; and (315) interest runs from death, if direction given to invest in annuity.

**PART XXXIX.—Of the Refunding of Legacies. 316—326.**

316—318. Refund may be required when, if legacy paid under orders of Court; but (317) not if paid voluntarily; and (318) when legatee must resort to the distributaries of the estate instead of the executor.

319—320. Executor may require refund of legacy for payment of debt of which he had no previous notice; and (320) executor giving same notices as in administration suit, is equally protected by them as in suit.

321—325. As to right of unpaid against paid legatee, if (322) assets were originally sufficient; and (325) if assets were not originally sufficient; and (324) rule as to extent of refund; and (325) no interest payable on refund.

326. After payment of debts and legacies residue to be paid to residuary legatee.

**PART XL.—Of the Liability of Executor or Administrator for Devastation. 327—328.**

327. Executor, &c., liable for misapplication of estate; and (328) for loss occasioned by neglecting to get in estate.

**PART XLI.—Miscellaneous. 329—332.**

329. Enacts Schedule of Stamp Duties.

330. Saves rights of Administrator General.

331. Saves the Hindu and Mahometan Laws of Succession: and excepts Wills made before 1st January 1866, and saves from Section 4 marriages before same date.

334. Gives the Governor-General in Council power to exempt any race, &c., from operation of the Act.

**SCHEDULE.**

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."
- 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.
- This Act to constitute the law of British India in cases of Intestate or Testamentary Succession.
- Interpretation Clause. III. In this Act, unless there be something repugnant in the subject or context—
- Words importing the singular number include the plural: words importing the plural number include the singular; and words importing the male sex include females.
- "Number."
- "Gender."
- "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.
- "Immoveable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth.
- "Immoveable property."
- "Moveable property." "Moveable property" means property of every description except immoveable property.
- "Province." "Province" includes any division of British India having a Court of the last resort.
- "British India" means the Territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic.,
- "British India."
- Cap. 106 (*An Act for the better Government of India*) other

than the Settlement of Prince of Wales' Island, Singapore, and Malacca.

“ District Judge.” “ District Judge” means the Judge of a principal Civil Court of original jurisdiction.

“ Minor” means any person who shall not have completed the age of eighteen years, and “ minority” means the status of such person.

“ 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.

“ Codicil” means an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will.

“ 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.

“ Executor” means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

“ Administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

And in every part of British India to which this Act shall extend, “ Local Government” shall mean the person authorized by law to administer Executive Government in such part; and

“ High Court” shall mean the highest Civil Court of Appeal therein.

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 immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable 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.

Law regulating succession to a deceased person's immovable and moveable property, respectively.

*Illustrations.*

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, 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 moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

VI. A person can only have one domicile for the purpose of succession to his moveable property.

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.

Domicile of origin of person of legitimate birth.

*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.

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.

Domicile of origin of illegitimate child.

Continuance of domicile of origin. IX. The domicile of origin prevails until a new domicile has been acquired.

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.

Acquisition of new domicile.

*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.

*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.

**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.

Special mode of acquiring domicile in British India.

**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 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.

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.

**XIII.** A new domicile continues until the former domicile has been resumed, or another has been acquired.

Continuance of new domicile.

**XIV.** The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Minor's domicile.

*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.

**XV.** By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Domicile acquired by a woman on marriage.

**XVI.** The wife's domicile during the marriage follows the domicile of her husband.

Wife's domicile during marriage.

*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 per-  
son's moveable property  
in British India, in ab-  
sence of proof of his  
domicile elsewhere.

XIX. If a man dies leaving moveable 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 consan-  
guinity.

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-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.

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.

XXIV. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

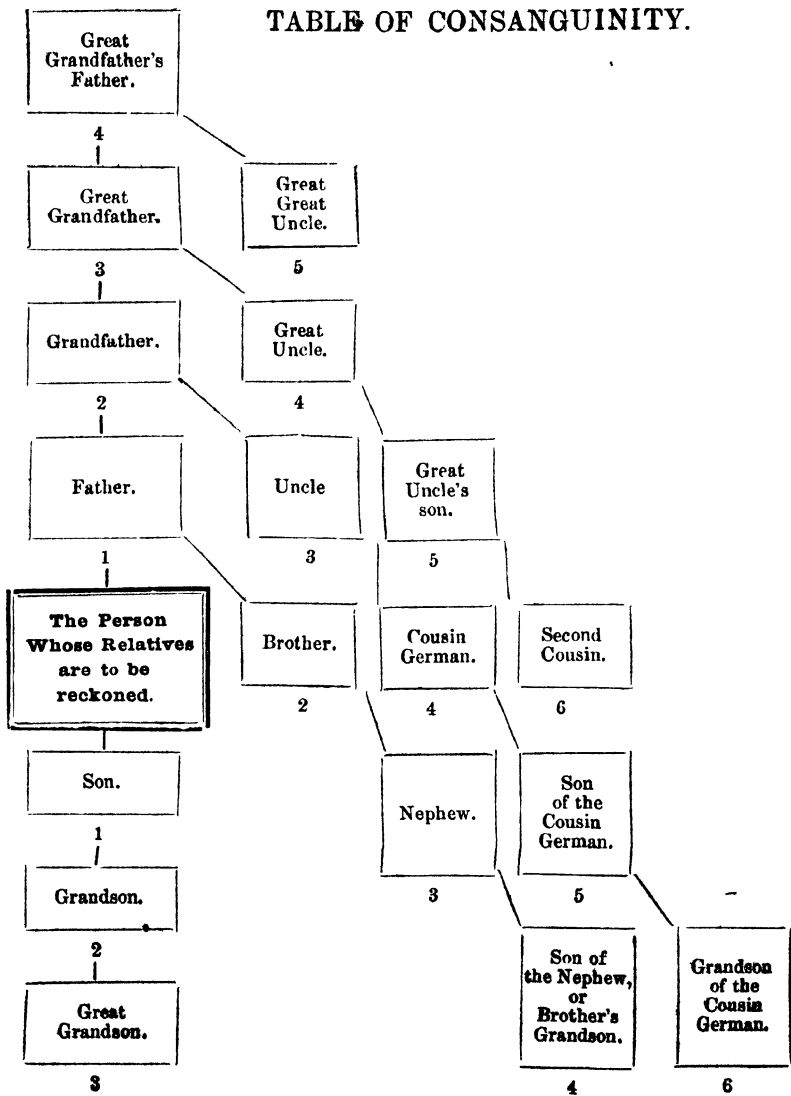
Mode of computing degrees of kindred.

*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.*

TABLE OF CONSANGUINITY.



PART IV.

*Of Intestacy.*

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.

As to what property a deceased person is considered to have died intestate.

*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 having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

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.

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.

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.

Where the intestate has left a widow and lineal descendants, or a widow and kindred only, or a widow and no kindred.

Where the intestate has left no widow, and where he has left no kindred.

## PART V.

*Of the Distribution of an Intestate's Property.**(a) Where he has left lineal descendants.*

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:—

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.

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 die 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.

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 has left only great-grandchildren or lineal descendants in a remoter degree.

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 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 descendants, 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.*

**XXXIV.** Where an 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:—

Rules of distribution where the intestate has left no lineal descendants.

Where intestate's father is living.

**XXXV.** If the intestate's father be living, he shall succeed to the property.

**XXXVI.** If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters 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.

Where intestate's father is dead but his mother, brothers and sisters are living.

*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.

**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.

Where intestate's father is dead and his mother, a brother or sister, and children of any deceased brother or sister are living.

*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.

**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.

Where intestate's father is dead and his mother and the children of any deceased brother or sister are living.

*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.

**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 grandfather and a grandmother, 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.

## PART VI.

### *Of the Effect of Marriage and Marriage Settlements on Property.*

**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.

Rights of widower and widow respectively.

**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.

No rights to property not comprised in an antenuptial settlement, acquired by marriage between a person domiciled and a person not domiciled in British India.



**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.

Settlement of minor's property in contemplation of marriage.

## PART VII.

### *Of Wills and Codicils.*

**XLVI.** Every person of sound mind and not a minor may dispose of his property by Will.

Persons capable of making Wills.

*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.

### *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.

**XLVII.** A father, whatever his age may be, may by Will  
 Testamentary Guar- appoint a guardian or guardians for his  
 dian. child during minority.

**XLVIII.** A Will or any part of a Will, the making of  
 Will obtained by fraud, which has been caused by fraud or coer-  
 coercion or importunity. cion, 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 favour ; 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, 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.

**XLIX.** A Will is liable to be revoked or altered by the  
 Will may be revoked maker of it at any time when he is com-  
 or altered. petent to dispose of his property by Will.

## PART VIII.

*Of the 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 :—

Execution of unprivileged Wills.

*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.

LI. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing 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.

Incorporation of papers by reference.

## PART IX.

*Of Privileged Wills.*

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.

Privileged Will.

*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.

LJII. 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:—

Mode of making, and rules for executing privileged Wills.

*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 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 preparation 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.*

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.

*Explanation.*—A legatee under a Will does not lose his legacy by attesting a Codicil which confirms the Will.

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.

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 pro-

Revocation of Will by testator's marriage.

Effect of gift to attesting witness.

Witness not disqualified by interest or by being executor.

perty 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.

*Explanation.*—Where a man is invested with power to deter-

mine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

**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.

**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 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.

**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.

**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.

## PART XI.

### *Of the Construction of Wills.*

**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.

**LXII.** For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court must inquire into every material fact relating to the persons who claim to be interested

Revocation of privileged Will or Codicil.

Revival of unprivileged Will.

Extent of revival of Will or Codicil partly revoked and afterwards wholly revoked.

Wording of Will.

Enquiries to determine questions as to object or subject of Will.

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.

*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, Misnomer or misdescription of object. 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.

*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.

(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.

**LXIV.** Where any word material to the full expression of the meaning has been omitted, it may be supplied.

When words 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.

**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.

Rejection of erroneous particulars in description of subject.

*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 zamíndári of Rampore." He had an estate at Rampore, but it was a taluk and not a zamíndári. The taluk passes by this bequest.

**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.

When part of description may not be rejected as erroneous.

*Explanation.*—In judging whether a case falls within the meaning of this Section, any words which would be liable to re-

jection under the sixty-fifth Section are to be considered as struck out of the Will.

*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 bighás 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.

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.

Extrinsic evidence admissible in case of latent ambiguity.

*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 Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

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.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

*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 seventy-sixth Section.

(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.

**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.

Meaning of any clause to be collected from entire 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."

**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.

When words may be understood in a restricted sense, and when in a sense wider than usual.

*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 cloths, and to his friend A (a shipmate) 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 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.

**LXXI.** Where a clause is susceptible of two meanings,

Where a clause is open to two constructions, that which has some effect is to be preferred.

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.

**LXXIII.** If the same words occur in different parts of the

Interpretation of words repeated in different parts of Will.

same Will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

**LXXIV.** The intention of the testator is not to be set

Testator's intention to be effectuated as far as possible.

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.

**LXXV.** Where two clauses or gifts in a Will are irreconcilable, so that they cannot possibly

The last of two inconsistent clauses prevails.

stand together, the last shall prevail.

*Illustrations.*

(a) The testator by the first clause of his Will leaves his estate of Rām-nagar "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 testator 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.

**LXXVII.** The description contained in a Will, of 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

Words describing subject refer to property answering that description at testator's death.

death of the testator.

**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

Power of appointment executed by general bequest.

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.

**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

Implied gift to the objects of a power in default of appointment.

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.

**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.

Bequest to "heirs," &c., of a particular person without qualifying terms.

*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 intestate, 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.

**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

Bequest to "representatives," &c., of a particular person.

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.

**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 without words of limitation.

**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.

Bequest in the alternative.

*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.

**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.

Effect of words describing a class added to a bequest to a person.

*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.

**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.

Bequest to a class of persons under a general description only.

**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-

Construction of terms.



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.

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.

Words expressing relationship denote only legitimate relatives, or failing such, relatives reputed legitimate.

ry 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

#### *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.

(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.

**LXXXVIII.** Where a Will purports to make two bequests to the same person, and a question arises

Rules of construction where a Will purports to make two bequests to the same person.

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 any thing, 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.

*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 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

**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.

Constitution of residuary legatee.

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 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.

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.

Property to which a residuary legatee is entitled.

*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 zamíndarí, which belongs to him at the time of his death. B is entitled to the two legacies and the zamíndarí as part of the residue.

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.

Time of vesting of legacy in general terms.

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.

In what case a legacy lapses.

*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.

(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.

**XCIV.** But where a legacy is given to legatees in words

Effect in such a case, of words showing testator's intention that the shares should be distinct.

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.

**XCv.** Where the share that lapses is a part of the general

When lapsed share goes as undisposed of.

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.

**XCvI.** Where a bequest shall have been made to any

When a bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

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.

*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.

**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.

Bequest to A for the benefit of B does not lapse by A's death in testator's lifetime.

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.

**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.

Survivorship in case of bequest to a described class.

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 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.

(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 had 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.*

**XCLIX.** Where a bequest is made to a person by a parti-

cular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Bequest to a person by a particular description, who is not in existence at the testator's death.

*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.

(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.

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.

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

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 valid.

(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 marries 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.

(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.

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.

Rule against perpetuity.

#### *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 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.

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.

Bequest to a class, some of whom may come under the rules in Sections 100 and 101.

*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.

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.

Bequest to take effect on failure of bequest void under Section 100, 101 or 102.

rules contained in the three last preceding Sections, any bequest contained in the same Will, and intended to take effect

*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 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 immoveable, 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 Sultánpur 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 Sultánpur 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.

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.*

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

Date of vesting of legacy when payment or possession postponed.

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, 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 age 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 divested 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.

**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

Date of vesting when legacy is contingent upon a specified uncertain event.

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.*

(a) 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.

(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 leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur 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.

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 unless such event happens before the period when the fund bequeathed is payable or distributable.

Bequest contingent upon a specified uncertain event, no time being mentioned for its occurrence.

*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."

**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.

Bequest to such of certain persons as shall be surviving at some period not specified.

*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 representative 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.

## PART XVI.

### *Of Conditional Bequests.*

Bequest upon impossible condition.

CXIII. A bequest upon an impossible condition is void.

#### *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, 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.

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.

Bequest to A and, on failure of the prior bequest, to B.

the same thing to another if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior

*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.

**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.

Case in which the second bequest shall not take effect on failure of the first.

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.

**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 person. In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Bequest over, conditional upon the happening or not happening of a specified uncertain event.

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 person.

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 divested 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 divested 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.

**CXIX.** An ulterior bequest of the kind contemplated by the last preceding Section cannot take effect, unless the condition is strictly fulfilled.

condition must be 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.

*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 of 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.

**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.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen or 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.

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.

Such condition must not be invalid under Section 107.

CXXIII. Where a bequest is made with a condition super-added 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.

## 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.

**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.

Direction that a mode of enjoyment of absolute bequest is to be restricted to secure a specified benefit for the legatee.

*Illustrations.*

(a) A bequeaths 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 having ever had a child. Her representatives are entitled to the fund.

**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.

Bequest of a fund for certain purposes, some of which cannot be fulfilled.

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

*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.*

**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.

Legatee named as executor cannot take unless he shews intention to act as executor.

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.

*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.*

CXXIX. Where a testator bequeaths to any person a specific part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Specific legacy defined.

*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.”

“ 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 zamíndári of Rampore.

His taluk of Rámnagar.

His lease of the Indigo factory of Sulkea.

An annuity of 500 rupees out of the rents of his zamíndári of W.

A directs his zamíndári 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 zamíndári of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamíndári 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 securities."

"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.

**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

Request of stock where the testator had at the date of his Will an equal or greater amount of stock of the same kind.

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.

*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 be-

Request 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.

cause 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.

*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

When enumerated articles are not to be deemed to be specifically bequeathed.

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.

**CXXXIV.** Where property is specifically bequeathed

Retention, in form, of specific bequest to several persons in succession.

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.

*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.

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.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

specifically bequeathed, it shall in the absence of any direction to the contrary be sold, and the proceeds of the sale shall be in-

vested 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.*

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.

Demonstrative legacy defined.

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.

*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 Rámnagar.

A bequeaths to B " 10,000 rupees out of his estate at Rámnagar," or charges it on his estate at Rámnagar.

" 10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

**CXXXVIII.** Where a portion of a fund is specifically

Order of payment when legacy is directed to be paid out of a fund the subject of a specific legacy.

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.*

**CXXXIX.** If anything which has been specifically bequeathed does not belong to the testator

Ademption explained.

at the time of his death, or has been converted into property of a different kind, the legacy is ademed ;

that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

*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

**CXL.** A demonstrative legacy is not adeemed by reason

Non-adeemption of demonstrative legacy. 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.

**CXLI.** Where the thing specifically bequeathed is the

Ademption of specific bequest of right to receive something from a third party. right to receive something of value from 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.

**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 of 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

*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.

the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

*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.

Ademption where stock, specifically bequeathed, does not exist at testator's death.

CXLV. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

*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.

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.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

*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.

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 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.

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.

**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.

When removal of thing bequeathed does not constitute ademption.

*Illustrations.*

A bequeaths to B all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

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.

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.

**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.

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.

*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.



**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.

Change by operation of law of subject of specific bequest between date of Will and testator's death.

*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.

**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.

Change of subject without testator's knowledge.

*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.

**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, lent to a third party on condition that it shall be replaced.

**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.

Stock specifically bequeathed, sold but replaced and belonging to the testator at his death.

## PART XXII.

*Of the Payment of Liabilities in respect of the Subject of a Bequest.*

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 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.

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.

Completion of testator's title to things bequeathed to be at cost of his 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.

**CLVI.** Where there is a bequest of any interest in immoveable 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.

Exoneration of legatee's immoveable property for which land-revenue or rent is payable periodically.

*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.

**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 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.

Exoneration of specific legatee's stock in a Joint Stock Company.

*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.*

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.

### PART XXIV.

#### *Of Bequests 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.*

**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.

Annuity created by Will is payable for life only, unless a contrary intention appears by the Will.

#### *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.

**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 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.

Period of vesting where Will directs that an annuity be provided out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity.

#### *Illustrations.*

(a) A by his Will directs that his executors shall out of his property purchase an annuity 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 representative of C.

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.

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.*

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.

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.

#### *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.

the legatee.

CLXVI. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for

*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.*

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.

Circumstances in which election takes place.

CLXVIII. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favor 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.

Devolution of interest relinquished by the owner.

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.

Testator's belief as to his ownership immaterial.

*Illustrations.*

(a) The farm of Sultánpur was the property of C. A bequeathed 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 remaining 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 owing 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 Sultánpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultánpur 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 Sultánpur 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 Sultánpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultánpur 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 Sultánpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultánpur 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.



*Illustration.*

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur 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 Sultánpur 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 Sultánpur 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 Sultánpur, 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.*

## CLXXIII. Acceptance of a benefit given by the Will con-

When acceptance of a benefit given by a Will constitutes an election to take under the Will.

stitutes 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 will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the

residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

**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.

Presumption arising from enjoyment by legatee for two years.

**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.

Confirmation of bequest by act of legatee.

*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.

**CLXXVI.** If the legatee shall not, within one year after the death of the testator, signify to the testators' 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.

When testator's representatives may call upon legatee to elect.

Effect of non-compliance with their request within a reasonable time.

**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.

Postponement of election in case of disability.

PART XXVIII.

*Of Gifts in Contemplation of Death.*

Property transferable by gift made in contemplation of death.

When a gift is said to be made in contemplation of death.

**CLXXVIII.** A man may dispose, by gift made in contemplation of death, of any moveable 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 moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable. Such a gift may be resumed by the giver.

When it fails. 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.

*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.

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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 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.

Administration with copy annexed of authenticated copy of Will proved abroad.

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 appointed 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.

**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.

Persons to whom probate cannot be granted.

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.

**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 execu-

Separate probate of Codicil discovered after grant of probate.

Procedure when different executors are appointed by the Codicil.

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.

No right as executor or legatee can be established, unless probate or letters of administration shall have been granted by a competent Court.

**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.

Probate establishes the Will from testator's death.

**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.

Persons to whom letters of administration may not be granted.

**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.

No right to intestate's property can be established, unless administration previously granted by a competent Court.

**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.

From what period letters of administration entitle administrator to intestate's rights,

**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.

**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.

**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.

Procedure where executor renounces or fails to accept within the time limited.

**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

Grant of administration to universal or residuary legatee.

to him of the whole estate, or of so much thereof as may be unadministered.

**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.

Right to administration of representative of deceased residuary 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.

Grant of administration when there is no executor, nor residuary legatee, nor representative of such legatee.

**CXCIX.** Letters of administration with the Will annexed shall not be granted to any legatee other than an 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.

Citation to be issued before grant of administration to any legatee other than universal or residuary.

**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.

Order in which connections by marriage or consanguinity are entitled to administration.

**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

Grant of administration where no widow, or widow excluded.

Proviso.

that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Deceased's kindred of equal degree, equally entitled to administration.

CCIV. Those who stand in equal degree of kindred to the deceased, are 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.



## PART XXX.

*Of Limited Grants.**(a.) Grants limited in Duration.*

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.

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.

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.

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.*

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.

CCXIII. When any person to whom, if present, letters of Administration, with the Will annexed, to Attorney of an absent person, who, if present, would be entitled to administer. might be granted, is absent from the Province, letters of administration with the Will annexed may be granted to his Attorney, limited as above-mentioned.

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.

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.

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.

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.

**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.

(c.) *For Special Purposes.*

**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, the letters of administration with the Will annexed shall accordingly be limited.

**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.

**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.

**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.

**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 to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

**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 situate, 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.

**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.

Administration limited to the purpose of becoming a party to a suit to be brought against administrator.

Administration limited to collection and preservation of deceased's property.

Appointment as administrator, of person other than the one who under ordinary circumstances would be entitled to administration.

*(d.) Grants with 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.

Probate or administration with the Will annexed, subject to exception.

**CCXXVII.** Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

*(e.) Grants 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 take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of the rest.

*(f.) Grants 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.

Grant 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.

Rule as to grants of effects 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.

Administration when a limited grant has expired, and there is still some part of the estate unadministered.

*(g.) Alteration in Grants.*

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.

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.*

CCXXXIV. The grant of probate or letters of administration may be revoked or annulled for 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 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.*

**CCXXXV.** The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

Jurisdiction of District Judge in granting and revoking probates and letters of 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's powers as to the granting of probate and administration.

**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 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 Indian 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.

District Judge may order any person to produce testamentary papers.

**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.

Proceedings of District Judge's Court in relation to probate and administration.

**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,

When and how District Judge is to interfere for the protection of property.

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.

**CCXL.** Probate of the Will or letters of administration to the estate of a deceased person may be

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.

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, moveable or immoveable, within the jurisdiction of the Judge.

**CCXLI.** When the application is made to the Judge of a

When application is made to the Judge of a District in which the deceased had no fixed abode.

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, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

**CCXLII.** Probate or letters of administration shall have effect over all the property and estate,

Conclusiveness of probate or letters of administration.

moveable or immoveable, 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.

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 authorizing 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.

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, moveable or immovable, situate within the jurisdiction of the Judge.

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; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—"I (A B) do declare that I read and perfectly understand the

Conclusiveness of application for probate or administration, if properly made and verified.

Petition for probate.

In what cases translation of Will to be annexed to the petition.

Verification of translation made by any person other than the Court translator.

language and character of the original, and that the above is a true and accurate translation thereof.”

CCXLVI. Applications for letters of administration shall be made by petition distinctly written as administration. Petition for letters of administration. 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.

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.”

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).”

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.

Punishment for making false averment in petition or declaration.

**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  
 Form of such grant. 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 of the said deceased, and in any way con-  
 cerning his Will, was granted to \_\_\_\_\_ the execu-  
 tor 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.”

CCLV. And wherever it shall appear to the District Judge  
 Grant of letters of ad- ministration to be under  
 seal of Court. \_\_\_\_\_ 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 :—

“ I, \_\_\_\_\_, Judge of the District of \_\_\_\_\_, hereby  
 Form of such grant. 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.

CCLVI. Every person to whom any grant of administration  
 Administration-bond. 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.

**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 to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

**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 days from the death of the testator or intestate's death.

**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.

**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.

**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

Assignment of administration-bond.

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.

Filing of original Wills of which probate or letters of administration with Will annexed have been granted.

Grantee of probate or letters of administration shall alone have power to sue, &c., until the same shall have been revoked.

Procedure in contentious cases.

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.

CCLXII. Where any probate is or letters of administration are revoked, all payments *bond 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 or letters of administration shall be afterwards granted might have lawfully made.

Payment to executor or administrator before probate or letters of administration revoked.

Right of such executor or administrator to recoup himself for payments.

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.

Appeals from orders made by District Judge under powers conferred by this Act.

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.

Concurrent jurisdiction of High Court.

## PART XXXII.

### *Of Executors of their 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.

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.

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 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.*

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.

In respect of causes of action surviving the deceased, and rents due at the time of his death.

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 adminis-

Demands and rights of action in favour of or against deceased, survive to and against his executor or administrator.

trators; 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.

**CCLXIX.** An executor or administrator has power to dis-

Power of executor or administrator to dispose of deceased's property.

pose 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 immoveable estate of the deceased. The mortgage is valid.

**CCLXX.** If an executor or administrator purchases, either

Purchase by executor or administrator of deceased's property.

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.

**CCLXXI.** When there are several executors or administrators

Powers of several executors or administrators, exercisable by one.

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, moveable or immoveable.



(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.

**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.

Survival of powers on death of one of several executors or administrators.

**CCLXXIII.** The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

**CCLXXIV.** An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

**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.

Powers of married executrix or administratrix.

## PART XXXIV.

### *Of the Duties of an Executor or Administrator.*

**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.

As to deceased's funeral.

**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.

Inventory and account.

**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.

Duty of executor or administrator as to property of, and debts owing to, the deceased.

**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 before all debts.

**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.

Expenses to be paid next after such expenses

**CCLXXXI.** Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid and then the other debts.

**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.

Save as aforesaid, all debts to be paid equally and rateably.

**CCLXXXIII.** If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Application of moveable property to payment of debts, where the deceased's domicile was not in British India.

*Illustration.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable 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 moveable estate, and the proceeds of the immoveable 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 immoveable estate.

**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 immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under Section 283 to bring such payment into account before sharing in proceeds of immoveable property.

part of his debt by virtue of the last preceding Section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such

*Illustration.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable 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 moveable estate. The proceeds of the immoveable 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.

**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.

Executor or administrator not bound to pay legacies without indemnity.

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

**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 retain any money on

Abatement of general legacies.

Executor not to pay one legatee in preference to another.

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 retain 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.

Executors'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.

(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.

**CCXCIII.** The assent of the executor to a specific bequest

shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the

Effect of executor's assent to a specific legacy.  
Assent may be verbal, and either express or implied.

circumstances of the property require that it shall be transferred in a particular way.

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.

**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.

**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.

Assent of executor gives effect to legacy from testator's death.

**CCXCVI.** The assent of the executor to a legacy gives effect to it from the death of the testator.

*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.

Executor not bound to pay or deliver legacies until after one year from testator's death.

**CCXCVII.** An executor is not bound to pay or deliver any legacy until the expiration of one year from the 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.

When payment of annuity to be paid quarterly or monthly first falls due.

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 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.

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 first 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.

Dates of successive payments when first payment of an annuity directed to be made within a given time, or on a day certain.

Apportionment where annuitant dies between times of payment.

## PART XXXVII.

*Of the Investment of Funds to provide for Legacies.*

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 sum bequeathed where a legacy, not specific, is given for life.

Investment of amount of general legacy, to be paid at a future time.

meet it in securities

Intermediate interest.

the testator's estate.

CCCII. Where an annuity is given and no fund is charged

Procedure when no fund is charged with or appropriated to an annuity.

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.

CCCIV. Where a bequest is contingent, the executor is

Transfer to residuary legatee of amount of contingent bequest.

not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

CCCV. Where the testator has bequeathed the residue of

Investment of residue bequeathed to a person for life, without direction to invest in particular securities.

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.

CCCVI. Where the testator has bequeathed the residue of

Investment of residue bequeathed to a person for life, with direction to invest in specified securities.

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.



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.

Time and manner of the conversion and investment.

Interest payable until investment.

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 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.

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.

## 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.

CCCX. The legatee under a general residuary bequest

Residuary legatee entitled to produce of residuary fund from testator's death. 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 testator's death belongs to A.

(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 the testator's death goes as undisposed of.

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.

Interest when no time is fixed for payment of a general legacy.

*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.

CCCXII.—Where a time has been fixed for the payment of Interest when time has been fixed. 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.

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.

## 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.

CCCXVIII. When the time prescribed by the Will for the

Refund when legacy has become due on performance of a condition within further time allowed under Section 124.

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.

CCCXIX. When the executor has paid away the assets in

When each legatee is compellable to refund in proportion.

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.

CCCXX. Where an executor or administrator has given

Distribution of assets.

such notices 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

Creditor may follow assets. 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.

CCCXXI. A creditor who has not received payment of his

Within what period a creditor may call upon a legatee to refund.

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.

**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.

**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.

**CCCXXIV.** The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee 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.

Refunding to be without interest.

**CCCXXV.** The refunding shall in all cases 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.

## PART XL.

*Of the Liability of an 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.

Liability of executor or administrator for devastation.

*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.

CCCXXVIII. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of the deceased's property.

*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. For every instrument or writing of any of the kinds specified in the Schedule to this Act, and which shall be made or executed after the commencement of this Act, there shall be payable to Government a Stamp duty or fee of the amount indicated in the said Schedule.

Stamps and fees on instruments mentioned in this Act.

CCCXXX. Nothing contained in this Act shall be deemed or taken to supersede or affect the rights, duties, and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively, under or by virtue of Act VIII of 1855 (*to amend the law relating to the office and duties of Administrator General*), Act XXVI of 1860 (*to amend Act VIII of 1855*), The Regimental Debts Act, 1863, and the Administrator General's Act 1865; and it shall be the duty of the Magistrate or other Chief Officer charged with the executive administration of a district or place in criminal matters, whenever any person to whom the provisions of this Act shall apply shall die within the limits of his jurisdiction, to report the circumstances without delay to the Administrator General of the Province, retaining the property under his charge until letters of administration shall have been obtained by that Officer or by some other person, when the property is to be delivered over to the person obtaining such letters, or who may obtain probate of the Will (if any) of the deceased.

CCCXXXI. The provisions of this Act shall not apply to Intestate or Testamentary succession of Hindús, Muhammadans or Buddhists and certain Wills, Intestacies and marriages not affected by this Act. to the property of any Hindú, Muhammadan or Buddhist; nor shall they apply to any Will made, or any intestacy occurring before the first day of January 1866. The fourth Section shall not apply to any marriage contracted before the same day.

CCCXXXII. 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

Power of Governor-General to exempt any race, sect, or tribe in British India from the operation of this Act.

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.

### SCHEDULE.

#### STAMPS.

	Stamps.
Petition for probate or letters of administration where the value of the estate exceeds Rupees five hundred	... Rupees 10 0 0
Ditto where the value of the estate is less than Rupees five hundred	... Rupee 1 0 0
Probate or letters of administration	... Rupees 8 0 0
Caveat	... Rupees 4 0 0
Citation	... Rupee 1 0 0
All petitions other than those abovementioned	... Rupee 1 0 0
Inventory	... Rupee 1 0 0
Administration-bond	.. Rupees 8 0 0

#### FEE.

Translations by the Court Translator or by order of the Court, per folio of ninety words Rupees 2 0 0

### MOFUSSIL SMALL CAUSE COURTS.

#### ACT No. XI. OF 1865.

[Received the assent of the G. G. on the 15th March 1865.]

Recites expediency of consolidating the Laws relating to Small Cause Courts in the Mofussil.

1. Interprets words of Number, Gender, the words Judge, Section, Court of Small Causes, Local Governments.

2. Repeals Act XLII, 1860 and Act XII, 1861, saving in some respects Courts constituted under that Act.



3—10. Empowers Local Governments, with consent of the Governor-General in Council, to constitute Small Cause Courts under this Act, and (4) gives such Courts a Seal, and (5) as to where they shall be held, and (6) of what causes have cognizance up to 500 Rupees; and (7) empowers the Government to extend the jurisdiction to 1,000 Rupees; and (8) as to causes of jurisdiction; and (9) as to when the suit is against Government; and (10) when against the Secretary of State for India.

11. Directs when service of summons on servant, &c., shall be good service.

12. Makes jurisdiction of Small Cause Court exclusive, save as to specified jurisdiction of Magistrates, &c., Village Moonsiffs, &c., Military Courts of Request, &c., and of specified single officers in Madras and Bombay.

13—14. Small Cause Court Judge to be appointed by Local Government, with salary to be determined by the Governor-General in Council, and (14) Judge, if of 2 or more Courts, to go on Circuit.

15. Local Government may also invest any person with powers of Small Cause Court Judge, &c.; who (16) may have concurrent jurisdiction with Judge, and business to be distributed between them, how; and (17) remuneration of such person to be fixed by the Governor-General of India in Council.

18—20. In suits under this Act Summons to be for final disposal, and no written statement, &c.; and (19) immediate execution of decree may be given; and (20) after sale of immoveable property, execution may be obtained against immoveable, how.

21—28. Decrees, &c., under this Act final, but may be set aside in specified cases, and how, or new trial may be granted; and (22) Court may reserve questions of law, &c., for its own opinion in suits up to 500 Rupees, and for opinion of High Court in suits above 500 Rupees; and (23) may pass a decree contingent on the result of that reserved question, but not issue execution; and (24) an early day shall be fixed for reserved case being heard; and (25) parties or their Pleaders may be heard in High Court; which Court (26) shall send its judgment under seal to Court below; and (27) costs in High Court to be costs in the cause; and (28) High Court may alter, &c., decree of Court below, and make such order as justice may require.

29—34. Local Government may appoint one the Principal Court, if more than one in a District; and (30) assigns the powers of the Principal Judge; and (31) Rules may be made by Government for two Judges sitting together; and (32) if they differ on point of law, question to be referred to High Court; on (33) any other kind of question, the Senior Judge to have the casting voice; and (34) if Judge and Person only with acting power differ, the Judge to have casting voice.

35—39. Empowers Local Government to appoint Registrar for Small Cause Court with salary; who (36) shall be Chief Ministerial Officer of the

Court; and (37) in absence of Judge may receive complaints, with power to reject, and (38) take confession of judgment and enter same; and (33) receive applications for execution, and execute them, &c.

40—43. Local Government may give Registrar powers of a Judge up to 20 Rupees, and (41) in such suits he shall proceed as Judge would, in subordination to powers of Judge, in what respects; and (42) no appeal to lie, but he may reserve question, &c., for Judge; and (43) his decree may be set aside, &c., by Judge only on same grounds as Judge's might be.

44—45. Clerk of the Court with salary may be appointed; appointment and removal to lie with the Court; and Registrar may be Clerk; and Clerk shall, (45) subject to Registrar, issue all process, keep accounts, &c.

46. High Court shall have power to make Rules and Orders, &c., for Small Cause Courts.

47. Extends Stamp Act X, 1862, Section 26, to Small Cause Courts, and Code of Civil Procedure so far as applicable.

48. Saves Small Cause Courts in Military Cantonments from Act III, 1859, Section 3, and from Act XXII, 1864, Sections 6, 7, 8.

49. Saves Courts of Requests under 27 Vic. c. 3 from this Act and from Act XXII, 1864, Sections 6, 7, 8.

50. Applies to this Act references in previous Acts to Act XLII, 1860, and procedure of this Act to be substituted for that of Act XLII, 1860.

51. Whenever Small Cause Court's business insufficient to occupy Judge fully, Local Government may invest him with other specified powers under Code of Criminal Procedure, &c.

52. Empowers Local Government to appoint Small Cause Court Judge to hear cases under Act X, 1854, arising within local limits of Court.

53. Makes it duty of Small Cause Courts to comply with requisitions of Government for Records, Returns, &c.

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.

Interpretation clause.

Words importing

Number.

Gender.

“ Judge.”

“ Section.”

I. In this Act, unless there be something repugnant in the subject or context—  
the singular number include the plural,  
and words importing the plural number  
include the singular.

Words importing the masculine gender  
include females.

“ Judge” includes an Acting Judge.

“ Section” means a Section of this Act.

“ Court of Small Causes.”

“ Court of Small Causes” means a Court constituted under this Act.

And, in every part of British India in which this Act operates,

“ Local Government.”

“ Local Government” denotes the person authorized to administer the Executive Government in such part, and

“ High Court.”

“ High Court” denotes the highest Civil Court of Appeal having jurisdiction therein.

II. 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*), and Act XII of 1861 (*to amend Act XLII of 1860*) are hereby repealed: 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: and all suits and proceedings pending in any such Courts shall be heard and determined in the same manner as suits and proceedings are required to be heard and determined under this Act; but this Act shall not in any way invalidate or alter the effect of anything which shall have been done in any such suit or proceeding prior to the commencement of this Act.

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.

IV. Every Court of Small Causes shall use a seal bearing  
Seal of the Court. the following inscription in English and  
in the language of the Court—" Court of Small Causes of  
",—and shall be subject to the  
Courts to be generally subject to the High Court. general control and orders of the High  
Court.

V. Courts of Small Causes shall be held at such place or places  
Places where Courts to be held. within the local limits of their respective  
jurisdictions, as shall from time to time be  
appointed by the Local Government.

VI. The following are the suits which shall be cognizable by  
Suits cognizable by Small Cause Courts. Courts of Small Causes, namely, claims for  
money due on bond for 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 value the sum of five hundred  
Proviso. Rupees whether on balance of account or  
otherwise; Provided that no action shall  
lie in any such Court—

(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, un-  
less, 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  
Power to extend jurisdiction of Small Cause Courts to Rupees one thousand. any Court of Small Causes, in suits of the  
nature described in the last preceding Sec-  
tion and thereby made cognizable by  
Courts of Small Causes, to an amount not exceeding one thou-  
sand Rupees.

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.

*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 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.

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.

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.

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.

**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 Pancháyats, 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 suits in Military Bazars, in Cantonments, and Stations occupied by the troops of those Presidencies respectively; or by Pancháyats in regard to suits against Military persons, according to the Rules in force in the Presidency of 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.

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 Panchayats in Madras.

Of Military Courts of Requests.

Of Officers appointed to try small suits in Madras and Bombay.

Or of Military Panchayats in Madras.

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.

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.

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 appointed under the thirteenth Section, the person 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

Power to Judge of several Courts to fix times and dates of circuits and sittings.

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.

Jurisdiction to be exercised by persons so invested in Court in which there is a Judge.

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.

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.

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.

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 moveable property of the judgment-debtor within the same limits. If the warrant be directed against the moveable 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.



XX. In the execution of a decree under this Act, if, after the sale of the moveable 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 immoveable 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 immoveable 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.

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

Execution against immoveable property, if moveable property not sufficient.

Decision in suits tried under this Act to be final.

*Ex-parte* decree may be set aside.

New trial.

is the defendant or one of the defendants, unless he shall with  
 On deposit of debt his notice of application deposit in Court  
 and costs, the amount for which a decree shall have  
 been passed against him, including the costs (if any) of the  
 opposite party.

XXII. If in the trial of any suit under this Act any ques-  
 tion of law, or usage having the force of  
 Power to refer ques- tion of law, or any question as to the construc-  
 tions of law, &c. to High law, or any question as to the construc-  
 Court. tion 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.

XXIII. The Court may proceed in the case notwithstanding  
 such reference, and may pass a decree con-  
 Power to pass decrec- tingent upon the opinion of the High  
 contingent upon the opi- Court on the point referred ; but no execu-  
 nion of the High Court. tion shall be issued in any case in which a reference shall have  
 been made, until the receipt of the order of the High Court.

XXIV. The High Court shall fix an early day for the  
 hearing of the case, and shall cause notice  
 High Court to fix day of such day to be placed in the Court-  
 for the hearing. house.

XXV. The parties to the case may  
 appear and be heard in the High Court in  
 Parties may appear person or by Pleader.  
 and be heard in person  
 or by Pleader.

XXVI. The High Court, when it has heard and considered  
 the case, shall send a copy of its judgment,  
 Decision of High Court under the seal of the Court, to the Court  
 to be transmitted. 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.

XXVII. Costs, if any, consequent on the reference of a case  
 for the opinion of the High Court, shall  
 Costs of reference to be costs in the suit.  
 High Court.

**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 stating 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.

**XXIX.** Whenever more Courts than one are constituted in any District under this Act, the Local Government may appoint one of the same Courts to be the Principal Court of Small Causes in such District.

**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.

**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.

**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

Power to High Court to alter or set aside order or decree made in the matter.

Power to appoint one of the Courts of a District to be the Principal Court.

Judge of Principal Court may sit with Judge of any other Court in the District for the trial of reserved suits.

Local Government may make Rules providing that two Judges shall sit together for trial of certain suits.

Procedure when two Judges differ on a point of law.

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.

**XXXIII.** If two Judges differ on any matter other than the matters above-mentioned, 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.

Casting voice in case of difference on a question of fact between a Judge and a person invested with a Judge's powers.

**XXXIV.** If a Judge and a person invested with the powers of a Judge as aforesaid differ on any matter other than the matters above mentioned, the Judge shall have the casting voice.

**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.

Appointment 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 provisions contained in the next following Section, receive all complaints 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.

Duties of Registrar.

**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 complaint presented to the Court is defective in any of the

Procedure where Registrar thinks complaint defective in certain particulars.

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

Proviso.

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.

**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 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.

**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

Registrar may receive and enter up judgments by confession.

Execution of decrees by Registrar.

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.

**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.

Power to invest Registrar with jurisdiction of Small Cause Court Judge in certain cases.

**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, 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.

Hearing of suits cognizable by Registrar.

Transfer from Registrar's to Judge's file.

**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,

No appeal from decision of Registrar under last Section: but in cases of doubt, he may submit statement for opinion of Judge.

of the person invested with the powers of a Judge as aforesaid, in like manner as the Judge may, under the twenty-second

Provisions applicable to such reference. 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.

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.

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.

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 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.

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

High Court empowered to make rules of practice, &c.

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.

**XLVII.** The twenty-sixth Section of Act X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*), and, 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.

**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 Causes 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.

**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 convened under the hundred and third Section of the Statute 27 Vic., cap. 3, or the corresponding Section in any other 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.



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.

Reference in previous Acts to Act XLII of 1860 to be read as applying to this Act.

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 a Small Cause Court Judge the powers of a Principal Sudder Ameen or a Magistrate.

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.

Power to give Small Cause Court Judge jurisdiction to hear claims under Act X of 1859.

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.

Small Cause Courts to furnish records, &c., called for by Local Government or High Court.

## HIGH COURT. FORT WILLIAM—PRISONERS.

## ACT No. XII. OF 1865.

[Received the assent of the G. G. on the 15th March 1865.]

Recites expediency of Prisoners in Calcutta being committed to the Custody of an Officer appointed by Government instead of to the Sheriff.

1. Interprets words High Court, Magistrate.
2. Repeals Act XXVIII, 1862, Sections 47, 48, 49, 50, 51, 52 and Act XXV, 1863.
3. Commitments to be no longer to Sheriff, nor warrants of arrest directed to him.
- 4—6. Authorizes Bengal Government to appoint a Superintendent of Presidency Jail, for reception and custody of Prisoners, to whom (5) shall be delivered Prisoners under sentence, &c., and (6) for intermediate custody, if to be transported.
7. Calcutta Magistrates to commit prisoners under sentence to same custody.
8. Superintendent to detain Prisoners according to the warrant.
9. Prisoners committed by Justice of the Peace for trial at Sessions to be delivered to Superintendent with warrant.
- 10—11. Prisoners under arrest by Civil Process to be delivered to Superintendent, with Copy of Warrant, who (11) shall detain such person according to exigency of warrant.
12. Transfers to custody of Superintendent persons confined in Jail at time of commencement of this Act.
13. Warrant of Commitment of State Prisoners under Bengal Regulation III, 1818, may be directed to Superintendent.
14. Extends this Act to persons in prison, or liable to be so, under Insolvent Debtor's Act, 11 V., c. 21.
- 15—16. Act to come into operation 1st April 1865, and (16) may be extended to Madras and Bombay.

WHEREAS it is expedient that, within the local limits of the original jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal, persons should, for the purpose of being received and detained in prison, be committed to the custody of an Officer appointed by the Government of Bengal, instead of to the custody of the Sheriff of Calcutta; It is enacted as follows :—

Preamble.

I. In this act :—

“High Court.”

“High Court” denotes Her Majesty’s High Court of Judicature at Fort Wil-

liam in Bengal.

“Magistrate” includes a Magistrate of Police appointed under Act XIII of 1856 (*for regulating the Police of the Towns of Calcutta,*

*Madras and Bombay, and the several Stations of the Settlement of Prince of Wales’ Island, Singapore and Malacca*).

II. The forty-seventh, forty-eighth, forty-ninth, fiftieth,

Enactments repealed.

fifty-first and fifty-second Sections of Act XVIII of 1862 (*to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof, with amendments, and further to improve the administration of Criminal Justice in Her Majesty’s Supreme Courts of Judicature*), and Act XXV of 1863 (*to empower Judges of the High Court and other authorities at Fort William in Bengal, to direct convicts to be imprisoned either in the House of Correction or the Great Jail of Calcutta, and to authorise the transfer of prisoners in certain cases from the House of Correction to the Great Jail, and from the Great Jail to the House of Correction*) are hereby repealed.

III. After the commencement of this Act, no person shall

After commencement of Act no one to be committed to Sheriff ;

be committed to the Sheriff of Calcutta to be received and detained in prison ; and no writ shall be awarded to the said Sheriff commanding him to arrest and seize the body of any offender.

And writs not to be issued to Sheriff.

IV. It shall be lawful for the Government of Bengal to

Government of Bengal may appoint Superintendent of Presidency Jail.

appoint an Officer who shall be called the Superintendent of the Presidency Jail, and who shall have authority to receive

and keep prisoners committed to his custody under the provision of this Act.

V. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to imprisonment or to death, the Court shall cause such person to be delivered to the Superintendent of the Presidency Jail, together with the warrant of the said Court, and such warrant shall be executed by the said Superintendent and returned by him to the High Court when executed.

Persons sentenced by High Court to imprisonment or death to be delivered to the Superintendent of the Presidency Jail.

VI. Whenever any person shall be sentenced by the High Court in the exercise of its original Criminal jurisdiction to transportation or penal servitude, the Court shall cause such person to be delivered for intermediate custody to the said Superintendent, and the imprisonment of such person shall have effect from such delivery.

Persons sentenced by High Court to transportation or penal servitude to be delivered for intermediate custody to Superintendent.

VII. Whenever any person shall be sentenced by a Magistrate of Police for the Town of Calcutta to imprisonment, and whenever any person shall be imprisoned for default of payment of any fine imposed by any such Magistrate, the Magistrate shall cause such person to be delivered to the said Superintendent together with a warrant of the Court.

Persons sentenced by Magistrate to imprisonment or imprisoned for non-payment of fine to be delivered to Superintendent with a warrant.

VIII. The said Superintendent shall detain the person so delivered to him according to the exigency of such warrant, and shall return such warrant when executed to the Court whence it issued.

Superintendent to detain such persons according to exigency of warrant, and to return same when executed.

IX. Persons committed by a Justice of the Peace or Magistrate for trial by the High Court in the exercise of its original Criminal jurisdiction, shall be delivered to the said Superintendent together with a warrant of commitment, directing him to have the bodies of such persons before the Court for trial at the Sessions of the Court next ensuing after the date of such commitment.

Persons committed by Justice for trial by High Court to be delivered to Superintendent with warrant.

**X.** Every person arrested in pursuance of a warrant or order of the High Court in the exercise of its original Civil jurisdiction, or in pursuance of a warrant of any Court established in Calcutta under Act IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay*), shall be delivered by the proper Officer of the Court executing such warrant, together with a copy of such warrant, to the said Superintendent; and the Officer executing such warrant shall thenceforward be absolved from responsibility for the custody of the person so delivered.

**XI.** The said Superintendent shall detain the person delivered to him by the Officer of the Court in manner aforesaid, according to the exigency of the warrant, and return the same to the said Officer of the Court as soon as the terms of the said warrant shall have been complied with.

**XII.** From and after the commencement of this Act, all persons confined in the Great Jail of Calcutta, under process or sentence of Her Majesty's Supreme Court of Judicature at Fort William in Bengal, or of the High Court, or of any Police Magistrate, shall be considered to be and shall remain in the custody of the said Superintendent according to the terms of the warrants under which they shall have been respectively committed to custody.

**XIII.** Any warrant of commitment under Regulation III, 1818, of the Bengal Code (*for the confinement of State Prisoners*), may be directed to the said Superintendent in the same manner as the same might have been directed to the Sheriff under Act XXXIV of 1850 (*for the better custody of State Prisoners*) and Act III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*.)

XIV. The provisions contained in the Statute 11 Vict., cap. 21 (*to consolidate and amend the laws relating to Insolvent Debtors in India*), relating to persons in prison or liable to be arrested, or detained in or remanded or recommitted to, or entitled to be discharged from, prison within the limits of the town of Calcutta, shall apply to all persons in the custody of the said Superintendent, or liable to be delivered to or entitled to be discharged from his custody.

Provisions of Statute 11 Vict., cap. 21, as to prisoners, to extend to persons in custody of Superintendent.

XV. This Act shall come into operation on the first day of April 1865.

Commencement of Act.

XVI. The provisions of this Act may be extended to the local jurisdictions of Her Majesty's High Courts of Judicature at Madras and Bombay respectively by notification in the Gazette of India: such provisions when so extended shall, *mutatis mutandis*, relate to the custody of prisoners in such jurisdictions; and Regulation II of 1819 of the Madras Code (*for the confinement of State Prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the confinement of State Prisoners and for the attachment of the lands of Chieftains and others, for reasons of State*), shall respectively be read for the said Regulation III of 1818 of the Bengal Code, and so much of the Regulations or Acts for the time being in force in such jurisdictions respectively as is in any way inconsistent with or repugnant to any of the provisions of this Act shall thenceforward cease to have effect in such jurisdictions.

Act may be extended to Madras and Bombay.

### HIGH COURTS' CRIMINAL PROCEDURE AMENDMENT AND CIRCUIT COMMISSIONS.

ACT NO. XIII. OF 1865.

[*Received the assent of the G. G. on the 21st March 1865.*]

Recites expediency of amending Criminal Procedure of High Court in original Jurisdiction, and of providing for exercise of Original Criminal Jurisdiction under Commission out of Presidency Towns.

*Preliminary. 1—2.*

1. Entitles Act, High Courts' Criminal Procedure Act, 1865.
2. Interprets words High Court, Chief Justice, Judge, Registrar, Magistrate, Clerk of the Crown, British India, and gives rule as to words of gender and number.

*Of Charges when the Accused is committed in Presidency Town. 3—8.*

- 3—6. Committing Magistrate to send to Clerk of the Crown a written instrument of charge signed by him ; which (4) the Clerk of the Crown shall consider, &c., and may amend, and copy, if required, shall be given to accused, as also (5) copy of the Depositions, &c. ; and (6) upon such charge the accused shall be tried.
7. Interprets the word Indictment in Act XVIII, 1862, to mean "charge."
8. Judge may order entry equivalent to a *nolle prosequi*, on charge, if clearly unsustainable, and as to effect of such entry.

*Of Grand Juries. 9—10.*

- 9—10. Abolishes the Grand Jury, saving (10) any Grand Jury already summoned.

*Of Juries in Presidency Towns. 11—18.*

11. Charge for offence punishable with death to be tried by Special Jury, and for any other offence, if ordered by Judge.
12. Continues the Jury Lists for the current year to end of year, and makes the current Grand Jury the Special Jury List for the year.
13. Directs that no new names be added to Special Jury List till it is reduced below 200 names.
14. Exempts Special Jurors from serving on Common Juries.
- 15—18. Directs the Clerk of the Crown, &c., before 1st April each year to prepare new Jury List, and before 15th April a Special Jury List ; and (16) gives that Officer full discretion in the matter ; (17) Annual Lists to be published in Gazette and at Court House ; and (18) thirty-six Special Jurors and seventy-two Common Jurors to be summoned for each Session.

*Of Challenges of Jurors in the Presidency Towns. 19—20.*

- 19—20. Gives 20 peremptory challenges in Common and 10 in Special Juries, but no challenge to the array, and defines the grounds of challenge, 1, 2, 3 ; and (20) challenges, other than peremptory, to be tried, &c.

21. Saves, except as above, all the powers of the High Court as to Juries, and gives High Court power to make Rules.

*Of Sittings under a Commission.* 22—46.

22. Empowers the Governor-General in Council to issue Commissions to High Court Judges of Bengal for Circuit trials, authorizing the Judges to hold sittings in places to be named in such Commissions, and there to exercise same jurisdiction as in Presidency, subject to provisions in Section 28 and following Sections.

23—24. Authorizes Governor in Council of Madras, and Governor in Council of Bombay to issue like Commissions for those Presidencies.

25. Authorizes the High Court to allot to the Judge or Judges acting under such Commission such part of the extraordinary original Civil jurisdiction and Civil and Appellate jurisdiction, and jurisdiction of revision and reference of the High Court, as may be conveniently exercised on Circuit.

26. Directs that the Commission should specify the dates for the Judges on Circuit to remain in Circuit Town.

27. Authorizes the appointment of an Associate Judge to sit with the High Court Judge, but the latter to preside, conduct the case, and pronounce judgment.

28. Directs Justices in case of commitment of European British subjects to send the proceedings to the Clerk of the Crown, who shall obtain the orders of the Court as to place of trial, if Commission has issued, &c.

29. Provides as to the effect of the charge, and for entering a *nolle prosequi* if it be unsustainable.

30. Directs as to the Jail to which commitments of European British subjects shall be.

31. Empowers the High Court to direct the commitment, &c., of European British subjects to what place both for trial and intermediate custody; and notice thereof to be given to the Clerk of the Crown.

32—33. Gives the Circuit Judges the same jurisdiction in respect of persons committed for trial on Circuit as High Court as might be exercised in ordinary place of trial, but trial to be according to Code of Criminal Procedure, except as is excepted.

34. All trials before Circuit Judge to be by Jury.

35—37. On notice from Government, of intention to issue Commission under the Act, High Court shall issue notice to Zillah Sessions Judge, who shall take prescribed measures for summoning Jurors, and in addition, if necessary to make up the required number, Commissioned and Non-Commissioned Officers, with consent of Commanding Officer; (37) the majority of the Jury empanelled to try European British subject to be Europeans or Americans, and on every trial Jury to consist of 12, of whom a majority of



nine shall be necessary for verdict of guilty, and in default of such majority, prisoner to be acquitted.

38. Acts not of a judicial character requiring to be done during trial may be done by Clerk of the Crown.

39. Exempts from operation of Section 380 of the Code of Criminal Procedure sentences of death and convictions of offence punishable with death in Circuit trial; and (40) exempts from operation of Chap. 26 of same Code judgments in Circuit trial.

41. Empowers Circuit Judge to reserve any question of law or of the admissibility of evidence for decision of the High Court. And directs proceeding after sentence if no question is reserved. And if question is reserved, proceedings to be according to Code of Criminal Procedure.

42. Extends Code of Criminal Procedure to the constitution, &c., of Juries for Circuit trials, save as otherwise directed by this Act.

43. High Court Judge on Circuit may direct the Associate Judge to try any person not being European British subject, who would be triable by himself.

44. Empowers the Governor-General in Council to appoint by Commission under this Act any Barrister of not less than 5 years' standing to hold sittings on Circuit, which Barrister shall have same powers as he would have had if a High Court Judge.

45—46. Act to commence on date to be appointed by Notification in Gazette; but (46) not to extend to Straits Settlements.

WHEREAS it is expedient to amend the procedure of the High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, in the exercise of their original Criminal jurisdiction, and also to provide for the exercise by such Courts of original Criminal jurisdiction under the Commission of the Governor-General of India in Council, or of either of the Governors in Council of Madras and Bombay, in places other than the Presidency Towns, or at several such places by way of circuit; It is enacted as follows:—

Preamble.

### *Preliminary.*

I. This Act may be cited as “The High Courts’ Criminal Procedure Amendment Act, 1865.”

Short title.

Interpretation clause.

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

“ High Court” denotes Her Majesty’s High Courts of Judicature at Fort William in Bengal, at Madras, and at Bombay, respectively.

“ Chief Justice,” “ Judge,” “ Registrar,” and other words denoting any particular Officer, respectively include any person for the time being authorized to act as such Chief Justice, Judge, Registrar, or other Officer.

“ Magistrate” denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure, and includes Police Magistrates in any Presidency Town.

“ Clerk of the Crown” includes, besides such Officer, a Crown Prosecutor and any Officer specially appointed by the Governor-General of India in Council or the Governor in Council of Madras or Bombay to discharge the functions given by this Act to the Clerk of the Crown, in respect of any sittings of a Judge or Judges of the High Court in a place other than the usual place of sitting, or in respect of any sittings of a Barrister under the forty-fourth Section of this Act.

“ British India” denotes the Territories which are or may become vested in Her Majesty or her successors under the Statute 21 and 22 Vic., Cap. 106, except the Settlement of Prince of Wales’ Island, Singapore, and Malacca.

Words importing the masculine gender include females, words in the singular number include the plural, and words in the plural number include the singular.

*Of Charges where the Accused is committed in a Presidency Town.*

III. Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court for an offence committed, or which, according to law, may be dealt with as if it had been committed within the local limits of its ordinary jurisdiction.

Charge to be delivered to Clerk of the Crown with commitment within the local limits of the ordinary original Civil jurisdiction.

nary original Civil jurisdiction, shall, together with all examinations, informations, bailments, and recognizances now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him stating for what offence such person is so committed or held to bail.

IV. The Clerk of the Crown shall peruse and consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter, or add to the same. The charge, with such amendments, alterations, or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge, with such amendments, alterations, or additions (if any) gratis.

Clerk of the Crown to consider and, if he will, to amend, alter, or add to the charge.

Charge with amendments, alterations, or additions (if any) to be recorded.

V. The person charged shall also be entitled to copies of the examinations of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Accused to have copies of examinations.

VI. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions contained in the eighth Section of this Act) shall be arraigned at suit of the Crown, and the verdict shall be recorded thereupon.

Effect of charge.

VII. In Act XVIII of 1862 (*to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal justice in Her Majesty's Supreme Courts of Judicature*), the word "indictment" shall be understood to include the word "charge," and all the provisions of the said Act shall apply to charges recorded as aforesaid and the trial of such charges.

Provisions of Act XVIII of 1862 as to indictments to apply to charges preferred under this Act.

VIII. When any such charge shall have been recorded in the High Court as aforesaid, and shall at any time before the person charged is arraigned appear to the Judge of the High Court who would in ordinary course try the same, to be clearly unsustainable, an entry to that effect may be made on the charge by such Judge. Such entry may be made without the fiat of the Advocate-General, and shall have the effect of a *nolle prosequi* upon the charge, but shall not operate as an acquittal of the person charged unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

*Of Grand Juries.*

IX. From and after the date on which this Act shall come into operation, no warrant or precept shall be issued to the Sheriff or other Officer directing him to summon any persons to attend and serve as Grand Jurors. All persons who, but for this Act, would have been exempt from serving on Common Juries shall be liable, except as hereinafter provided, to serve on such Juries.

X. No person shall be brought before the High Court on the presentment or inquisition of Grand Jurors, unless such presentment or inquisition shall have been made by Grand Jurors who shall have been duly summoned before this Act comes into force :  
 No one to be charged on the presentment or inquisition of Grand Jurors, unless they have been summoned before the commencement of this Act.  
 Provided that if any precept for summoning a Grand Jury shall have been issued for the then next coming Sessions of the High Court, such Grand Jury shall proceed at such Sessions as if this Act had not passed.

*Of Juries in Presidency Towns.*

XI. Every person tried in a Presidency Town upon a charge of having committed an offence which is punishable with death, or upon any other charge if a Judge of the High Court shall so order, shall be tried before a Special Jury.

Certain trials to be held before Special Juries.

**XII. The Jurors' Book for the year current when this Act**

The Jurors' Book for the current year, to be taken as giving the first list of Jurors and Special Jurors.

comes into force, shall be taken as containing a correct general list of persons qualified and liable to serve as Jurors under this Act: and those persons whose names are entered in the said Jurors' Book as being privileged to serve on Grand or Special Juries only, shall be deemed to be persons privileged and liable to serve only as Special Jurors under this Act: and a list of such last-mentioned persons, to be called the "Special Jurors' List," shall forthwith, and subject to such rules as shall be prescribed by the High Court, be prepared by the Clerk of the Crown or such other Officer as the Chief Justice of the High Court shall direct.

**XIII. The number of persons included in the "Special**

The number of Special Jurors in the first list to be allowed to die down to two hundred.

Jurors' List" prepared as in the last preceding Section is provided, shall be permitted gradually from year to year to diminish until the whole number of names remaining on such list shall not exceed two hundred: and no new name shall be added to such list until the number shall have been so diminished by the death or change of residence of the persons originally included in the list, or by other loss of such qualification as gave them the privilege of serving only as Grand or Special Jurors. After the number shall once have been reduced

After which the number of Special Jurors not to exceed two hundred.

as aforesaid, the names of not more than two hundred persons shall ever at any one time be entered in the Special Jurors' List.

**XIV. All persons whose names are entered in the "Special**

Special Jurors exempted from serving on Common Juries

Jurors' List" shall be exempted from serving on any other than Special Juries.

**XV. The Clerk of the Crown, or such other Officer as the**

Preparation of lists of Jurors and Special Jurors.

Chief Justice of the High Court shall direct, shall, before the first day of April in each year, and subject in all respects to such rules as the High Court shall from time to time prescribe, prepare a list of all persons qualified and liable to serve as Jurors: and shall, before the fifteenth day of April which shall first occur after the reduction of the number of names in the "Special Jurors' List" as aforesaid, and before every subse-

quent fifteenth day of April, but subject always to such rules as aforesaid, take from the general list of Jurors the names of such persons as he may think fit, regard being had to their property, character, and education, and shall enter the same in the "Special Jurors' List."

XVI. The Clerk of the Crown or other Officer appointed by the Chief Justice shall, subject to such rules as aforesaid, have full and entire discretion to prepare the said lists as shall seem to him to be proper, and there shall be no appeal from or review of his decision.

XVII. The list of persons qualified or liable to serve as Jurors, and the "Special Jurors' List," respectively, signed by the Officer by whom the same shall have been prepared, shall be published once in the Official Gazette, before the first day of May next after their preparation, and copies of the said lists shall be affixed to some conspicuous part of the Court House.

XVIII. Out of the names contained in the lists aforesaid, there shall be summoned for each Sessions thirty-six of those who are qualified and liable to serve on Special Juries, and seventy-two of those who are qualified and liable to serve on Common Juries.

*Of Challenges of Jurors in the Presidency Towns.*

XIX. A peremptory challenge to the number of twenty in Common Juries and ten in Special Juries, shall be allowed; but there shall be no challenge to the array, and, save as aforesaid, the following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person charged:—

(1.) Some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force.

(2.) Some presumed or actual partiality in the Juror.

(3.) A previous conviction of the Juror under the Indian Penal Code, or the criminal law administered in the Supreme Courts of Judicature or the Courts of the East India Company previously to the enactment of such Code.

XX. The Judge before whom the person charged is about to be tried shall try any challenge, other than a peremptory challenge, and if he allow the challenge, the Juror shall be set aside.

XXI. Save as hereinbefore provided, the High Court shall retain all its present powers respecting the summoning, empannelling, qualification, challenging, and service of Jurors in the Presidency Towns: and shall have power to make such rules on these subjects (not inconsistent with the provisions of this Act) as shall seem to it to be proper. All rules relating thereto now in force in the High Court shall (so far as they are not inconsistent with this Act) remain in full force until repealed or altered by new rules made under this Section.

*Of Sittings under a Commission.*

XXII. From and after the commencement of this Act, whenever it shall appear to the Governor-General of India in Council convenient that the jurisdiction and power vested in the High Court at Fort William in Bengal should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, whether within or without the Bengal Division of the Presidency of Fort William, other than the usual place of sitting of such Court, or at several such places by way of circuit, and the Governor-General of India in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein

Jurisdiction of Judge acting under Commission from Governor-General of India in Council.

Judge to try challenge.

High Court to retain its present jurisdiction as to Jurors in Presidency Towns except as altered by this Act.

directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court of Judicature at Fort William in Bengal in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of such High Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

XXIII. From and after the commencement of this Act whenever it shall appear to the Governor in Council of Madras convenient that the jurisdiction and power vested in the High Court of Judicature at Madras should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same High Court, whether within or without the Presidency of Madras, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Madras in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act.

XXIV. From and after the commencement of this Act, whenever it shall appear to the Governor in Council of Bombay convenient that the jurisdiction and power vested in the High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the same Court, whether within or

Jurisdiction of Judge acting under Commission of Governor in Council of Madras.

Jurisdiction of Judge acting under Commission of Governor in Council of Bombay.



without the Presidency of Bombay, other than the usual place of sitting of such Court, or at several such places by way of circuit, and such Governor in Council shall, by his Commission for that purpose, authorize and direct any of the Judges of such Court to hold sittings in such place or places accordingly, at or within such times as by such Commission may be authorized or directed, the Judge or Judges acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as would be had and exercised by a Judge or Judges of the High Court at Bombay in its ordinary place of sitting, but subject, as respects the exercise of original Criminal jurisdiction in any place other than the ordinary place of sitting of the same Court, to the provisions contained in the twenty-eighth and following Sections of this Act. \*

XXV. The High Court may allot to a Judge or Judges acting under a Commission as aforesaid, such part of the extraordinary original Civil jurisdiction, and of the Civil and Criminal Appellate jurisdiction, and of the jurisdiction as a Court of revision or reference, which it is competent to exercise at its usual place of sitting, as the High Court may consider can be more conveniently exercised at any place or places mentioned in such Commission.

XXVI. Every Commission issued as aforesaid under any of the preceding Sections shall specify the time during which and the Districts or places within which such Commission shall remain in force; and such time and the limits of such Districts or places shall be notified in the Official Gazette.

XXVII. The Governor-General of India in Council or the Governor of Madras or of Bombay in Council, as the case may be, may, by such Commission as aforesaid, associate with such Judge of the High Court any Barrister-at-law of not less than five years' standing, or any Sessions Judge. The person so associated shall be called the Associate Judge, and, unless directed to try persons separ-

High Court may allot jurisdiction to Judge acting under Commission.

Commission to specify time and place during and in which it shall remain in force.

Power to appoint an Associate Judge.

ately as hereinafter provided, may sit with the Judge of the High Court during the trials of persons tried under such Commission. Whenever any Associate Judge sits with the Judge of the High Court, the latter shall preside, conduct the case, and pronounce judgment.

XXVIII. Any Justice of the Peace or Magistrate without the local limits of the ordinary original Civil jurisdiction of the High Court, before whom any European British subject shall be brought for an offence committed without those limits, shall, immediately after the conclusion of the preliminary enquiry, and if he shall determine to commit or hold to bail such person for trial, give notice thereof to the High Court to which the commitment or bailment would ordinarily be made, and shall send to the Clerk of the Crown, together with the record of the preliminary enquiry, and translations into English of any writings not in that language, a written instrument of charge signed by him stating for what offence such person is committed or held to bail. On receipt of these documents, the Clerk of the Crown shall proceed as directed in the like case in the fourth Section, and the person charged shall be entitled to copies in like manner as he would be entitled to copies under the fifth Section, of this Act. If a Commission under which the person charged might be tried shall have been issued, the High Court shall consider at what place the person charged can be most conveniently tried, and shall give directions accordingly: if no such Commission shall have been issued, the High Court shall obtain information from the Government as to whether such Commission is about to issue, and shall then give such directions as last aforesaid. Provided always that, if the commitment or bailment have been made after the issue and during the running of a Commission under which the person charged might be tried, the notice by this Section directed to be given to the Clerk of the Crown shall be given, and the documents directed to be sent to the Clerk of the Crown shall be sent, to the Clerk of the Crown with the Judge of the High Court

acting under the Commission. Such Judge shall have all the powers given to the High Court by this and the next succeeding Section.

**XXIX.** The charge, whether it shall or shall not have been amended, altered, or added to under the last preceding Section, shall, if the person charged, be directed to be tried at a place other than the usual place of sitting of the Court, have the same effect as a charge under the thirteenth Chapter of the Code of Criminal Procedure, and the person charged shall be tried thereon before a Judge of the High Court, whether sitting by himself or with an Associate Judge. But if, at any time before the High Court shall have directed where the trial of the person charged shall take place, the charge appear to the High Court to be clearly unsustainable, an entry to that effect may be made by the proper Officer of the Court at any time before the commencement of the trial. Such entry shall have the effect of staying proceedings on the charge, but shall not operate as an acquittal of the person charged, unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted. If the person charged be directed to be tried at the usual place of sitting of the Court, the charge, whether amended, altered, or added to as last aforesaid or not, shall have the same effect as, and be deemed to be, a charge under the sixth, seventh, and eighth Sections of this Act.

**XXX.** Pending the directions of the High Court as to the place of trial, every such British subject as is referred to in the twenty-eighth Section of this Act shall (if not out on bail) be committed by the Justice of the Peace or Magistrate for intermediate custody to the nearest Criminal jail in which he can be most conveniently confined. If the trial shall be directed to take place in the usual place of sitting of the Court, the Justice of the Peace or

Magistrate shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the High Court shall direct that the person charged be tried elsewhere than in its usual place of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and take his trial in the place directed, or (as the case may be) shall, if necessary, cause him to be removed to the Criminal jail of or nearest to the place at which such person is directed to be tried; and the Officer in charge of such Criminal jail shall keep such person in safe custody until discharged in due course of law.

XXXI. It shall be lawful for the High Court to direct that all European British subjects committed or bailed for trial within certain specified Districts or during certain specified periods of the year, shall be tried at the usual place of sitting of the Court, or to direct that they shall be tried at a particular place named; and also to order that such European British subjects shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners. In any such case the High Court may direct, further, that the notice required by the twenty-eighth Section of this Act to be given, and the papers required by that Section to be sent, to the Clerk of the Crown, shall be given and sent to a particular Clerk of the Crown named by the High Court in that behalf. Every person bailed or committed to take his trial at any particular place in compliance with a general direction under the provisions of this Section, shall be dealt with in all respects as if he had been bailed or committed in compliance with a special direction under the twenty-eighth Section of this Act.

XXXII. When the High Court shall have directed that any European British subject shall be tried at any place other than its usual place of sitting, the Judge of the High Court acting under such Commission as aforesaid in the place

High Court may order European British subjects committed in certain Districts in certain seasons of the year to be tried at a particular place and confined in a particular jail.

Jurisdiction over European British subjects tried under Commission.

**XXXVI.** If the person charged shall be a European British subject and shall so require before the Jury shall be empannelled, the majority of the Jurors shall consist of Europeans or Americans. If such a Jury cannot be procured, the person so charged shall be sent for trial by the High Court in its usual place of sitting.

**XXXVII.** On every trial mentioned in the thirty-fourth Section of this Act, the Jury shall consist of twelve persons, and unanimity, or a majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such majority and concurrence, the prisoner shall be acquitted.

**XXXVIII.** During the trial of any person before a Judge of the High Court acting under Commission as aforesaid, or before a Judge of the High Court and an Associate Judge sitting together, any act, not of a judicial nature, which the Code of Criminal Procedure requires to be done by the Court of Session, may be done by the Clerk of the Crown or by any Officer of the Court directed by such Judge to perform such act.

**XXXIX.** So much of the three hundred and eightieth Section of the Code of Criminal Procedure as requires the confirmation by the Sudder Court of sentences of death passed by a Court of Session, and so much of the said Section as requires from the Court a statement of the grounds on which a person convicted of an offence made punishable by death by the Indian Penal Code has been sentenced to a punishment other than death, shall not apply to sentences by a Judge of the High Court acting under Commission as aforesaid.

**XL.** So much of the twenty-sixth Chapter of the Code of Criminal Procedure as requires judgment to be passed by a Criminal Court in any particular form, and as requires that the sentence or finding shall be recorded

Jury for trial of European British subject.

Number of Jury requisite to verdict of guilty.

Acts not of a judicial nature may be done by Clerk of the Crown.

Portions of Section 380 of Criminal Procedure Code not to apply to sentences by High Court Judge.

Portion of 26th Chapter of Criminal Procedure Code not to apply to sentences of High Court Judge.

in any particular form, shall not apply to judgments, sentences, or findings in trials before a Judge of the High Court acting under such Commission as aforesaid, whether sitting by himself or with an Associate Judge; but the Judge shall pass judgment and shall record or cause to be recorded the sentence and finding in such form as he shall think proper.

XLI. When any person has been convicted of an offence before a Judge of the High Court acting under Commission as aforesaid, the Judge, if he think proper, may reserve for the decision of the High Court any question of law or of the admissibility of evidence which has arisen in the course of the trial of such person. If the Judge reserve no such question, he shall forward the prisoner with a copy of his sentence and a warrant for the execution of the same to the Magistrate or other Officer

in charge of the jail of the District at which the trial was held, and such Magistrate or other Officer shall proceed thereupon in like manner as he is directed by the Code of Criminal Procedure to proceed in respect of sentences by a Court of Session not requiring confirmation. If the Judge reserve any question of law or of the admissibility of evidence, the person convicted shall, pending the decision of the High Court thereon, be dealt with in like manner as persons sentenced by a Court of Session in cases where the sentence requires the confirmation of the Sudder Court under the Code of Criminal Procedure. If the decision of the High Court be adverse to the person convicted, such decision shall be forwarded to the Court of Session of the District in which the trial took place, in like manner as is directed by the three hundred and eighty-third Section of the said Code with reference to orders of confirmation of sentences, and thereupon the said Court of Session and all other persons shall proceed as if the person convicted had been sentenced by such Court of Session and as if such sentence had been confirmed by the Sudder Court under the Code of Criminal Procedure.

**XLII.** Save as is hereinbefore otherwise provided, the Code of Criminal Procedure shall apply to the constitution and formation of Juries for the purpose of trials before a Judge of the High Court acting under Commission as aforesaid, or before such Judge and an Associate Judge, and to trials before such Judge of the High Court or before such Judge and an Associate Judge, and to sentences by such Judge of the High Court and to the carrying into execution of such sentences.

**XLIII.** If the Judge of the High Court think fit, he may direct the Associate Judge to try any person, other than a European British subject, who under this Act is triable by such Judge of the High Court. The trial of such person shall be regulated without exception by the rules of the Code of Criminal Procedure applicable to trials of persons committed or bailed for trial before a Court of Session, and such person, if convicted, shall be dealt with as if he had been convicted, before the Court of Session of the District in which the trial was held. Any person, other than a European British subject, who has been committed or bailed for trial before the Court of Session of any place mentioned in such Commission as aforesaid, but who has not been tried under this Act during the time for which the Commission remains in force, shall be tried by the Court of Session to which he was committed or bailed as if this Act had not passed.

**XLIV.** From and after the commencement of this Act, it shall be lawful for the Governor-General of India in Council by his Commission to authorize and direct any Barrister-at-law of not less than five years' standing, although not a Judge of any High Court, to hold sittings at any place in British India, other than the usual place of sitting of such Court, and other than any place referred to in the twenty-second, twenty-third, and twenty-fourth Sections

Save as aforesaid, Criminal Procedure Code to apply to Juries under Commission.

High Court Judge may direct Associate Judge to try any one triable under Commission, not an European British subject.

Power to Governor-General of India in Council to appoint a Barrister to hold sittings under Commission at places not hereinbefore referred to.

of this Act, or at several such places by way of circuit. The Barrister acting under such Commission, in the places and manner therein directed, shall have and exercise the same jurisdiction, power, and authority as (subject to the provisions hereinbefore contained) would be had and exercised by a Judge of the High Court acting under any such Commission as aforesaid.

**XLV.** This Act shall commence and come into operation on such date as the Governor-General of India in Council shall appoint by notification in the Gazette of India.

**XLVI.** This Act shall not extend to the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Act not to extend to Straits' Settlement.

### CENTRAL PROVINCES, JURISDICTION OF COURTS.

#### ACT NO. XIV. OF 1865.

[*Received the assent of the G. G. on the 7th April 1865.*]

1. Names the Act.—The Central Provinces Court's Act, 1865.
2. The term Assistant Commissioners to include Extra Assistant Commissioners.
3. Defines what shall be a District and what a Division.
- 4—5. Directs the appointment of eight grades of Courts and names them ; and (5) authorises the Chief Commissioner to assign to what grade any Tehsildar shall belong.
- 6—14. Empowers the Chief Commissioner to invest the Naib Tehsildar with defined Civil Jurisdiction ; and (7) defines the jurisdiction of the second class Tehsildar ; and (8) of the first class Tehsildar ; and (9) of the third class Assistant Commissioner ; and (10) of the second class Assistant Commissioner ; and (11) of the first class Assistant Commissioner ; and (12) of the Deputy Commissioner ; and (13) of the Commissioner ; and (14) of the Judicial Commissioner.
15. Gives thirty days for appeal if to Deputy Commissioner ; six weeks if to Commissioner of Division ; and ninety days if to Judicial Commissioner ; days in such case to be reckoned how. And same time given for applications for Special Appeal.
16. Empowers Government to invest temporarily any person with powers of Commissioner or Deputy Commissioner.
17. Directs that every suit be instituted in Court of lowest grade competent, but saves exclusive jurisdiction of Small Cause Court.



18. Gives an appeal from all decisions of all the Courts.

19. Empowers Deputy Commissioner to distribute the business of Courts subordinate to him sitting at same place.

20—21. Empowers Commissioner of Division and Deputy Commissioner to withdraw suits from Subordinate Courts and to try them himself; and (21) gives Judicial Commissioner power to transfer suit or appeal from one Court to another.

22—23. Regulates the jurisdiction as respects suits for immoveable property situate in different Districts; and (23) makes same provision where such property is situate in several Districts under different Commissioners.

24—25. Act to commence on 1st May 1865; and (25) may be extended by Governor General in Council, by proclamation, to Oudh; and after extension Civil Judge of Lucknow to be deemed Deputy Commissioner and Assistant Judge of Lucknow a third class Assistant. Appeals to lie to Judicial Commissioner.

WHEREAS it is expedient to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces; It is enacted as follows:—

Preamble.

Short title.

I. This Act shall be called "The Central Provinces Courts' Act, 1865."

II. In this Act—

Interpretation clause.

"Assistant Commissioner."

"Assistant Commissioner" includes Extra Assistant Commissioner.

III. For the purposes of this Act, the local jurisdiction of

"District."

"District Court."

"Division."

"Divisional Court."

a Deputy Commissioner shall be deemed a District, and the Court of such Deputy Commissioner shall be deemed the District

Court. The local jurisdiction of a Commissioner shall, in like manner, be deemed a Division, and his Court a Divisional Court.

IV. There shall be eight grades of Courts in the Central

Grades of Courts in the Central Provinces.

Provinces, which shall be in addition to any Courts of Small Causes, and to any

other Courts established under any Act which may hereafter be passed, namely:—

(1). The Court of the Tahsildar of the second class.

(2). The Court of the Tahsildar of the first class.

(3). The Court of the Assistant Commissioner of the third class.

(4). The Court of the Assistant Commissioner of the second class.

(5). The Court of the Assistant Commissioner of the first class.

(6). The Court of the Deputy Commissioner.

(7). The Court of the Commissioner.

(8). The Court of the Judicial Commissioner.

V. Subject to any orders that may from time to time be issued by the Local Government, the Chief Commissioner may declare grade to which a Tahsildar or Assistant Commissioner belongs. Chief Commissioner shall have power to declare to which of the said grades any Tahsildar and any Assistant Commissioner shall belong.

VI. The Chief Commissioner may, with the sanction of the Local Government, invest any Naib Tahsildar with power to try and determine suits, for money due, whether 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 value the sum of fifty rupees, and to prescribe the local limits within which the Naib Tahsildar so invested shall exercise such power. Chief Commissioner may give Naib Tahsildars jurisdiction up to fifty rupees.

VII. The Court of the Tahsildar of the second class shall have power to try and determine suits of every description not exceeding one hundred rupees in value or amount. Jurisdiction of Court of Tahsildar of the second class.

VIII. The Court of the Tahsildar of the first class shall have power to try and determine suits of every description not exceeding three hundred rupees in value or amount. Jurisdiction of Court of Tahsildar of the first class.

IX. The Court of the Assistant Commissioner of the third class shall have power to try and determine suits of every description not exceeding five hundred rupees in value or amount. Jurisdiction of Court of Assistant Commissioner of the third class.

X. The Court of the Assistant Commissioner of the second class shall have power to try and determine suits of every description not exceeding one thousand rupees in value or amount.

Jurisdiction of Court of Assistant Commissioner of the second class.

XI. The Court of the Assistant Commissioner of the first class shall have power to try and determine suits of every description not exceeding five thousand rupees in value or amount.

Jurisdiction of Court of Assistant Commissioner of the first class.

XII. The Court of the Deputy Commissioner shall have power to try and determine suits of every description and of any amount, and to hear appeals from the original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the first, second, third, and fourth grades, and of Naib Tahsildars invested as aforesaid.

Jurisdiction of Court of Deputy Commissioner.

XIII. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the fifth and sixth grades.

Jurisdiction of Court of Commissioner.

XIV. The Court of the Judicial Commissioner shall have power to hear and determine appeals from the original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Commissioners, and also applications for a special appeal as provided in the said Code, from the decisions passed in regular appeal by the Deputy Commissioners and by the Commissioners of Divisions.

Jurisdiction of Court of Judicial Commissioner.

XV. The memorandum of appeal prepared in the form, and containing the particulars, mentioned in the Code of Civil Procedure, shall be presented in the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show

Time for presenting appeals.

sufficient cause to the satisfaction of such Court for not having presented the memorandum of appeal within the said period ; that is to say, thirty days if the appeal lie to the Deputy Commissioner ; six weeks if the appeal lie to the Commissioner of a Division ; and ninety days if the appeal lie to the Judicial Commissioner. The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of the decree or order from which the appeal is made. Applications for special appeal shall be presented in the Court of the Judicial Commissioner within the period hereinbefore fixed for appeals.

XVI. Whenever the state of the public business requires it, the Local Government shall have power to invest any person with the powers of a Commissioner or of a Deputy Commissioner in any part of the Central Provinces.

XVII. Every suit shall be instituted in the Court of the lowest grade competent to try it: Provided that no suit cognizable by a Court of Small Causes shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Court of Small Causes.

XVIII. Except when otherwise provided in any Regulation or Act for the time being in force, an appeal shall lie from the decisions of the Courts of original jurisdiction to the Courts authorized by this Act to hear appeals from the decisions of those Courts.

XIX. The Deputy Commissioner may direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in such way as he shall think fit: Provided that no Court shall try any suit in which the amount or value of the claim shall exceed its proper jurisdiction.

**XX.** The Commissioner of the Division or the Deputy Commissioner may withdraw any suit instituted in any Court subordinate to him, and try such suit himself or refer it for trial to any other such subordinate Court and competent in respect of the value or amount of the suit to try the same. The Commissioner of the Division may also withdraw any appeal instituted in the Court of any Deputy Commissioner subordinate to him and try the appeal himself or refer it for trial to the Court of any other Deputy Commissioner in his Division.

**XXI.** The Judicial Commissioner may order that the cognizance of any suit or appeal which may transfer suits from one subordinate Court to another shall be instituted in any Court subordinate to him, not being a Court of Small Causes, shall be transferred to any other such subordinate Court, competent in respect of the value of the subject-matter of the suit or appeal to try the same.

**XXII.** If the suit be for any immovable property situate within the limits of different District Courts within the same Division, the suit may be brought in any Court otherwise competent to try it within the jurisdiction of which any portion of such property is situate, but in such case the Court in which the suit is brought shall apply to the Commissioner of the Division for authority to proceed with the suit; and the Commissioner, after hearing the objections, if any, of the defendant, may give such authority. If the suit is brought in any Court subordinate to the Court of the Deputy Commissioner, the application shall be submitted to the Commissioner of the Division through the Deputy Commissioner to whom such Court is subordinate.

**XXIII.** If the District Courts within the limits of whose jurisdiction the immovable property is situate are subordinate to different Commissioners, the application shall be submitted to the Commissioner of the Division to whom the District

Court in which the suit is brought is subordinate, and the Commissioner to whom such application is made may, after hearing the objections, if any, of the defendant, give authority to proceed with the suit.

Commencement of Act. XXIV. This Act shall commence and come into operation on the first day of May 1865.

XXV. The Governor-General of India in Council may, by an order to be published in the Official Gazette, extend the provisions of this Act to the Province of Oude, but not so as in any way to affect the provisions of Act XVI of 1865 (*to remove doubts as to the jurisdiction of the Revenue Courts in the Province of Oude in suits relating to land, and to enlarge the period of limitation in such suits*). On and after such extension, the Civil Judge of Lucknow shall be considered a Deputy Commissioner, and the Assistant Judge of Lucknow an Assistant of the third class, within the meaning of this Act. Appeals from the decisions and orders of the Civil Judge of Lucknow, when allowed by the Code of Civil Procedure or any other law, shall lie as at present to the Court of the Judicial Commissioner.

## PARSEE MARRIAGE AND DIVORCE ACT.

ACT No. XV. OF 1865.

[*Received the assent of the G. G. on the 7th April 1865.*]

Recites expediency of amending the Law relating to Marriage and Divorce of Parsees.

### I.—*Preliminary.*

1. Names Act, the Parsee Marriage and Divorce Act, 1865.
2. Interprets words of number and grades and the words Priest, Marriage, Husband and Wife, Section, Chief Justice, Court, British India, Local Government, and High Court.

### II.—*Of Marriages between Parsees.*

3. Declares invalid all Marriages contracted after commencement of this Act, if contracting parties are related within specified degrees of consan-

guinity or affinity, and in the case of Parsees under age of 21 if consent of father or guardian be not given.

4—5. Prohibits second marriage in life time of husband or wife, except after lawful divorce according to Act; and (5) subjects such second marriage to punishment of Bigamy under Penal Code.

6—14. Requires the Marrying Priest to certify the marriage in prescribed form; (7) to the Registrar to be appointed under this Act, for fee prescribed; the register (8) to be open at all times to inspection and extracts of fit to be given; and (9 and 10) prescribe penalty on Priest for violation of Sections 4 and 6; and (11) on other persons than Priests under Section 6; and (12) extends Section 466 of Indian Penal Code to making, signing, or attesting Certificate with false statement, &c.; and (13) enacts simple imprisonment for Registrar failing to enter Certificate, &c.; and (14) imprisonment of either kind for persons secreting, destroying, or fraudulently altering the Register.

### III.—*Of Parsee Matrimonial Courts.*

15—20. Directs the establishment of Special Courts in the Presidency Towns; (16) to be entitled Parsee Chief Matrimonial Court, local limits of which to be same as of High Court, Chief Justice of which is to be Judge of such Court, to be aided by 11 Delegates; and (17) provides for Parsee District Matrimonial Courts, with what limits; and (18) empowers Local Government to alter the limits of such District Courts; and (19) Districts with too few Parsees for District Court may be included in jurisdiction of Chief Matrimonial Court; and (20) every such Court shall have a seal to be kept where.

21—24 Directs Local Governments to appoint the Delegates, whose names shall be gazetted, and not to exceed 30 in Presidency Town, nor 20 in District; such Delegates (22) to be appointed for life, and number to be kept up by new appointment on vacancy occurring by death, &c.; and (23) to be deemed Public servants within the meaning of Indian Penal Code; and (24) to be appointed for duty by rotation.

25. Entitles Advocates, Vakeels, and Attornies of High Court and Local Courts to practise in these Matrimonial Courts.

26. Directs that suits be brought in Court within whose jurisdiction the defendant is residing, or, if he has left India, in place in which defendant and plaintiff last resided together.

### IV.—*Of Matrimonial Courts.*

#### (a) *For a Decree of Nullity.*

27—28. Marriage may, at instance of either party, be declared null and void for lunacy, become habitual, and continuing from time of marriage,

unless known at time of marriage; and (28) for non-consummation from natural causes making consummation impossible.

*(b) For a Decree of Dissolution in case of Absence.*

29. And marriage may be dissolved at instance of either party for continual absence of the other for seven years if not heard of as being alive by persons naturally likely to have heard.

*(c) For Divorce or Judicial Separation.*

30. Entitles the husband to sue for a divorce and dissolution of marriage on ground of adultery; and wife to sue the husband on ground of adultery and fornication under specified circumstances; the third offending party to be co-defendant, &c.

31. Entitles the wife to judicial separation for cruelty, &c.

32. Sets forth the facts to be negated in suit for divorce or separation to entitle plaintiff to a decree.

33—35. Entitles the wife to apply to the Court for costs of suit and maintenance pending the suit; and (34) on decree for divorce or separation Court may order an allowance to the wife as alimony; and (35) to be paid either to the wife or trustees for her.

*(d) For Restitution of Conjugal Rights.*

36—37. Entitles husband and wife to sue for restitution of conjugal rights, if either have deserted the other without lawful cause, &c.; (37) unless party suing, if the husband be under 16, or the wife under 14 years of age.

38—42. Directs that all suits under this Act shall be tried with closed doors, if either party so wish; and (39) imposes stamp on the proceedings; and (40) applies the Civil Code Procedure to proceedings under this Act; and (41) directs that questions of law and precedent shall be decided by the Judge, and of facts by a majority of the Delegates; and (42) gives an appeal to the High Court on specified grounds.

43. Authorizes marrying again after decree for dissolution and time for appealing is expired.

*V.—Of the Children of the Parties.*

44—45. Empowers the Court pending suit between parents, and in decree, to make all just orders for the custody, maintenance, and education of the children, &c.; and (45) in decree for divorce, &c. for adultery of the wife to make a settlement out of wife's property, if any, for benefit of the children.



VI.—*Of the Mode of enforcing Penalties under this Act.*

46—50. Gives Magistrate and Sessions Judges jurisdiction over offences under this Act according to the general limits of their jurisdiction in regard to punishments; and (47) establishes summary conviction before Magistrates of Police within Presidency Towns for offences punishable with fine, or fine and not more than six months' imprisonment; and (48) gives remedy by distress warrant for fines; and (49) authorizes arrest of offender till return of distress warrant unless security is given; and (50) authorizes arrest and imprisonment, &c. for fine if it cannot be levied.

VII.—*Miscellaneous.*

51—52. Empowers High Court to make Rules of Procedure for Matrimonial Court; and (52) empowers Governor General in Council to invest Executive Officers, &c., with powers of Local Government; (53) Act to come into operation on 1st September 1865.

Schedule of Forms.

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.*

Short title.	I. This Act may be cited as "The Parsee Marriage and Divorce Act, 1865."
Interpretation clause.	II. In this Act, unless there be something repugnant in the subject or context—
"Number."	Words in the singular number include the plural, and words in the plural number include the singular.
"Priest."	"Priest" means a Parsee Priest and includes Dastúr and Mobed.
"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.
"Husband" and "Wife."	
"Section."	"Section" means a Section of this Act.
"Chief Justice."	"Chief Justice" includes Senior Judge.

“ Court.” “ Court” means a Court constituted under this Act.

“ British India” means the Territories which are or shall be vested in Her Majesty or her successors by the Statute 21 and 22 Vic., cap. 106, entitled “ An Act for the better Government of 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 to exercise the powers vested by this Act in a Local Government; and “ High Court.” “ High Court” means the highest Civil Court of appeal in such part.

## II.—Of Marriages between Parsees.

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 or ceremony called “ Ásírvád” 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.

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.

Remarriage save after divorce unlawful during lifetime of first wife or husband.

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.

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 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 certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

VII. For the purposes of this Act a Registrar shall be appointed, who may be the Registrar appointed under Act XVI of 1864 (*to provide for the Registration of Assurances*). 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.

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.

**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.

**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.

**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.

**XII.** Every person making or signing or attesting any such certificate containing a statement which is false, and 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.

**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.

**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.*

XV. For the purposes of hearing suits under this Act, a Constitution of special Courts under this Act 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.

XVI. The Court so constituted in each of the Presidency Parsee Chief Matri- monial Courts. 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.

XVII. Every Court so constituted at a place other than a Parsee District Matri- monial Courts. 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 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.

XVIII. The Local Government may from time to time Power to alter territorial jurisdiction of District Courts. 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.

**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.

**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.

**XXI.** The Local Governments 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.

**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 considered to be public servants within the meaning of the Indian Penal Code.

**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

Certain Districts to be within the jurisdiction of the Chief Matrimonial Court.

Court Seal.

Appointment of Delegates.

Power to appoint new Delegate.

Delegates to be deemed public servants.

Selection of Delegates under Sections 16 and 17 to be from those appointed under Section 21.

the Delegates appointed by the Local Government under the twenty-first Section.

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.

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.

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.

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.

XXIX. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven 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.*

XXX. Any husband may sue that his marriage 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.

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.

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 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.

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.

XXXIV. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order Permanent alimony. 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.

XXXV. In all cases in which the Court shall make any decree or order for alimony, it may direct Payment of alimony to wife or to her trustee. 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.*

XXXVI. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted Suit for restitution of conjugal rights.

or without lawful cause ceased to 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.

**XXXVII.** Notwithstanding anything hereinbefore contain-

No suit to be brought to enforce marriage or contract arising out of marriage when husband under 16 years or wife under 14 years.

ed, 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.

**XXXVIII.** In every suit preferred under this Act, the

Suits may be heard with closed doors.

case shall be tried with closed doors should such be the wish of either of the parties.

**XXXIX.** Every plaint and petition of appeal preferred

Stamps on plaints and petitions.

under this Act shall bear a stamp of thirty-two Rupees, and all other instru-

ments and writings of the kind specified as requiring a stamp in Schedule B to Act No. X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*) and exhibited in a suit under this Act shall be stamped in accordance with the provisions of the said Act No. X of 1862.

**XL.** The provisions of the Code of Civil Procedure shall,

Provisions of Civil Procedure Code to apply in suits under this Act.

so far as the same may be applicable, apply to suits instituted under this Act.

**XLI.** In suits under this Act all questions of law and pro-

Determination of questions of law and procedure, and of fact.

cedure 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.

**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.

**XLIII.** When the time hereby limited for appealing against any degree 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.*

**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.

**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

Appeal to High Court.

Liberty to parties to marry again.

Custody of children *pendente lite*.

Orders as to custody of children after final decree.

Settlement of wife's property for benefit of children.

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.*

XLVI. All offences under this Act may be tried by any Cognizance of offences under this Act. 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.

XLVII. If any offence which by this Act is declared to be Punishment of offences under this Act, committed within local limits of High Court. 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.

XLVIII. All fines imposed under the authority of this Act Levy of fines by distress. 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.

XLIX. In case any such fine shall not be forthwith paid, Procedure until return is made to distress warrant. 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.

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 derminable in each of the cases aforesaid on payment of the amount of fine.

VII.—*Miscellaneous.*

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 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.

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.

LIII. This Act shall commence and take effect on the first day of September 1865, and shall extend to the whole of British India.

Rules of procedure of Par-ee Matrimonial Courts to be made by the High Court.

Power to invest Chief Executive Officer with power of Local Government.

Commencement and extent of Act.

SCHEDULE (See Section 6.)

Date and Place of Marriage.	Names of the Husband and Wife.	Condition at the time of Marriage.	Rank of Profession.	Age.	Residence.	Names of the Fathers or Guardians.	Rank or Profession.	Signatures of the Officiating Priest.	Signature of the Witnesses.	Signature of father or guardian, when husband or wife is an infant.

**OUDE.—REVENUE COURTS.**

**ACT NO. XVI. OF 1865.**

*[Received the assent of the G. G. on the 7th April 1865.]*

Recites that doubts had arisen under the Code of Civil Procedure as to the jurisdiction of the Courts of Revenue and Chief Commissioner, &c., in Oude, and the expediency of removing those doubts.

1. Interprets words of Number, and the words Courts of Revenue, Land.

2—3. Declares that the Courts of Revenue and of the Financial Commissioner shall exercise jurisdiction in all suits in any District relating solely to the title, succession or possession of land, during the period that any settlement of the Land Revenue is in progress, and during the continuance of such settlement, and for any further period notified in Gazette, &c.; and authorizes the Governor-General in Council to invest Appellate powers in any officer, &c.; and (3) makes the Financial Commissioner the highest Court of Appeal from the Revenue Courts, and prescribes for it the same rules of Procedure as the Sudder Court; and for all Courts the Code of Civil Procedure.

4. Makes the jurisdiction conferred on the Courts of Revenue and the Financial Commissioner exclusive for the suits in Section 2 specified.

5—8. Repeals the Law of Limitation for bringing suits relating to under-tenures, as to all causes of action which have arisen since February 13th, 1844, except as to suits by persons claiming only as tenants at will, or as having a right of occupancy, or as tenants at fixed or favorable rates; and (6) revives suits which had been dismissed or rejected under the Law of Limitation repealed by the last Section, provided a Petition to revive be brought within six months from date of the Act; the Petition to be on Stamped Paper; and (7) such revived suits to be heard and determined in the Civil Courts, according to their respective jurisdictions, &c.; and (8) makes decrees, &c., on such suits valid notwithstanding any provision in the operation of the Code of Civil Procedure.

**WHEREAS**, before the introduction of the Code of Civil Procedure into the Province of Oude, the jurisdiction in suits relating to the title or succession to land in the said Province, or to the possession of land, or to any right in respect of any land, was vested exclusively in the Courts of Revenue and in the Financial Commissioner, and after that office became vacant, in the Chief Commissioner; And whereas since the introduction of the said Code doubts have arisen whether such suits are cognizable in the first instance by the ordinary Civil Courts and on appeal

Preamble.

by the Judicial Commissioner, or in the first instance by the Revenue Courts and on appeal by the Chief Commissioner, or Financial Commissioner whose office has now been revived; And whereas it is expedient to remove such doubts and to enlarge the period of limitation within which certain classes of suits may be entertained under this Act; It is enacted as follows :—

I. In the construction of this Act, except where there is something repugnant in the subject or context—

Interpretation Clause.

Words in the singular number shall include the plural, and words in the plural number shall include the singular.

Number.

“ Courts of Revenue ” include Officers employed in making or revising Settlements.

“ Courts of Revenue.”

“ Land ” does not apply to any land excluded from a Settlement of Land Revenue, whether the Revenue be paid to Government or to the assignee of Government.

“ Land.”

II. In any District in the Province of Oude in which a Settlement of the Land Revenue is in progress, all suits of whatever description arising in such District relating solely to the title or succession to land, or to the possession of land, or to any right in respect of any land, shall, during the continuance of such Settlement, and for such further period thereafter as the Governor-General of India in Council, by notice to be published in the Official Gazette, may appoint, be cognizable in the first instance in the Courts of Revenue of the said Province, and in the last resort upon appeal by the Financial Commissioner. The Governor-General of India in Council may invest any Officer with the powers of a Court of first appeal between the Court of first instance and the Financial Commissioner, and shall fix the periods within which appeals shall be preferred from the decisions of the Court of first instance to the Court of

Suits and appeals relating to land during progress of Revenue Settlement to be cognizable by Courts of Revenue and Financial Commissioner.



first appeal, or, when there is no such Court, to the Financial Commissioner, and from the decisions of the Court of first appeal, when there is such Court, to the Financial Commissioner: Provided that where in a case of succession or inheritance the claim shall relate not only to land but to land and other property not permanently attached to the land comprised in the claim, neither the Revenue Courts nor the Financial Commissioner shall have jurisdiction under this Section.

III. The Financial Commissioner shall, with respect to suits cognizable by the Revenue Courts under the second Section of this Act, be deemed the highest Court of appeal in the Province of Oude within the meaning of the Code of Civil Procedure, and shall have and exercise in respect of such suits all the powers vested in the Sudder Court and shall be subject to all the rules prescribed with reference to the Sudder Court by such Code, subject to the restrictions, limitations and provisos with which the Code was extended to the said Province as contained in the declaration of the Governor-General in Council, bearing date the sixth August 1861. Subject to the same restrictions, limitations and provisos, the proceedings of the Courts of first appeal and the Court of first instance shall be regulated by the Code of Civil Procedure.

IV. Subject to the proviso in the second Section of this Act, no suit relating to the title or succession to land in Oude, or to the possession of land, or to any right in respect of any land shall, during the period limited in the said Section, be instituted or tried in any Court, or before any Authority, except in the Courts or before the Authorities hereinbefore in that behalf specified.

V. No suit relating to any under-tenure which shall be cognizable in any Revenue Court under this Act shall be debarred from a hearing under the rules relating to the limitation of suits in force in the Province of Oude, if the cause of action shall have arisen on or after the thirteenth day of February 1844.

Powers of Financial Commissioner as highest Court of appeal.

Suits not to be instituted or tried by any other than the Court or authority before specified.

Limitation rules not to apply to certain suits relating to under-tenures.

Provided that this Section shall not apply to any suit by a person claiming only a right to cultivate as a tenant-at-will, or as a tenant with the right of occupancy, or as a tenant at fixed or favorable rates.

VI. Any suit or appeal relating to any under-tenure (not being a suit within the proviso contained in the last preceding Section), cognizable under this Act by any Revenue Court, which may have been rejected or dismissed on the ground that the suit was barred by lapse of time under the law of limitation in force in the Province of Oude, may be revived and heard on the merits, if the cause of action shall have arisen on or after the date mentioned in the last preceding Section: Provided that a petition for the revival of the appeal or suit be presented in the Court of the Financial Commissioner if the rejection or dismissal took place in appeal, or in the Court of first instance if the rejection or dismissal took place in that Court, within six calendar months from the date of the passing of this Act. The petition may be written on paper bearing the stamp required for petitions presented to the Financial Commissioner or subordinate Revenue Court, as the case may be.

VII. All suits relating to the proprietary right in, succession to or possession of, any land, or to any right in respect to any land, which shall be instituted after the expiration of the period appointed in the second Section of this Act, shall be heard and determined in the Civil Courts of the Province of Oude according to their respective jurisdictions, under and subject to all the rules contained in the Code of Civil Procedure as the same shall have been extended to such Province, and not otherwise.

VIII. No order or decision made or passed by any Revenue Court in Oude subsequently to the extension of the Code of Civil Procedure to the Province and before the passing of this Act, in any suit relating to the proprietary right in, succession to or possession

Certain suits relating to under-tenures dismissed on ground of limitation-bar may be revived.

Procedure applicable to suits relating to land instituted after period mentioned in Section 2.

Saving of orders and decisions of Revenue Courts after the extension of Code of Civil Procedure to Oude.

of, any land, or to any right in respect of any land, in the said Province, shall be invalid by reason of anything contained in the said Code.

CUSTOMS DUTIES ON EXPORTS AND IMPORTS,

ACT No. XVII. OF 1865.

[Received the assent of the G. G. on the 10th April 1865.]

Recites expediency of amending the Law relating to Customs Duties.

1—3. Substitutes Duties in Schedules A. and B. for Duties under Acts VII, 1859; XXIII, 1859; X, 1860; XI, 1862; XXIII, 1862; XXIII, 1864. Saving, however, existing Duties on Salt and Opium, Free Ports, the provisions of Act VI, 1848, and the provisions of the Consolidated Customs Act: this Act as respects Saltpetre to take effect as from March 9th, 1865, and (3) to be called the Indian Customs Duties Act of 1865.

Schedule A.—Import Duties. B.—Export Duties.

WHEREAS it is expedient to amend the Law relating to Customs duties; It is enacted as follows:—

Preamble.

I. In lieu of the Customs duties authorized to be charged in Act VII of 1859 (*to alter the duties of Customs on goods imported or exported by Sea*), Act XXIII of 1859 (*to alter the rates of duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively*), Act X of 1860 (*to amend Act VII of 1859 to alter the duties of Customs on goods imported or exported by Sea*), Act XI of 1862 (*to amend Act X of 1860, to amend Act VII of 1859*), Act XXIII of 1862 (*to amend Act XI of 1862*), and Act XXIII of 1864 (*to amend the law relating to the Customs duties on goods imported by Sea*), there shall be levied and collected the duties specified in the two Schedules A and B annexed to this Act. Provided always that nothing herein contained, shall be deemed to alter the existing duties upon Salt and Opium, or to authorize the levy of duties in any free Port, or to affect the provisions of Act VI of 1848 (*for equalizing the duties on goods imported and exported on Foreign and British bottoms, and for abolishing duties on goods carried from Port to Port in the Territories*

Customs Duties to be levied as prescribed in the Schedules annexed to this Act.

*subject to the Government of the East India Company*), or to affect the provisions of the Consolidated Customs' Act.

II. So far as regards the Customs duty on the export of Saltpetre, this Act shall take effect as if it had been passed and had received the assent of the Governor-General on the ninth day of March 1865 ; but save as aforesaid, this Act shall take effect from the first day of April 1865.

Short title.

III. This Act shall be cited as "The Indian Customs Duties Act of 1865."

### SCHEDULE A.

Rates of Duty to be charged on the following goods imported by Sea into any Port in British India, not being a Free Port :—

1.	Bullion and Coin	...	...	...	...	Free.
2.	Precious Stones and Pearls	...	...	...	...	"
3.	Grain and Pulse	...	...	...	...	"
4.	Horses and other living Animals	...	...	...	...	"
5.	Ice	...	...	...	...	"
6.	Coal, Coke, Bricks, Chalk, and Stones	...	...	...	...	"
7.	Cotton Wool	...	...	...	...	"
8.	Wool	...	...	...	...	"
9.	Flax	...	...	...	...	"
10.	Hemp	...	...	...	...	"
11.	Jute	...	...	...	...	"
12.	Hides and Skins, raw	...	...	...	...	"
13.	Books	...	...	...	...	"
14.	Paper	...	...	...	...	"
15.	Maps, Prints, Music, and Works of Art	...	...	...	...	"
16.	Seeds when imported by any Public Society for gratuitous distribution	...	...	...	...	"
17.	Agricultural Implements	...	...	...	...	"
18.	Firewood	...	...	...	...	"
19.	Machinery used exclusively for purposes of Agriculture, Navigation, Mining, or Manufacture, or for Railway purposes, and materials forming necessary component parts of such machinery	...	...	...	...	"

And the Officer in charge of the Custom House, subject to the orders of the Local Government acting under the general instructions of the Government of India, shall decide what articles come within the definition of such machinery, or materials forming component parts thereof, and such decision shall be final in law.

- |     |   |   |
|-----|---|---|
| 20. | Military and other Regulation Uniforms and Accoutrements when imported for private use by persons in the Public Service | ... Free.   |
| 21. | Guano and manures of all kinds  | ... .. „  |
| 22. | Bottles   | ... .. „  |
| 23. | Wines and Liqueurs  | ... One Rupee the imperial gallon.  |
| 24. | Porter, Ale, Beer, Cider, and other similar fermented Liquors   | ... One anna the imperial gallon.   |
| 25. | Spirits   | ... Three Rupees the imperial gallon, and the duty to be rateably increased as the strength exceeds London Proof. |

Provided that ten per cent. *ad valorem* shall be charged on all spirits used exclusively in Arts and Manufactures, or in Chemistry, subject to such rules as the Local Governments shall from time to time prescribe, for ascertaining that such spirits are unfit for use as a beverage, and incapable of being converted to that purpose. And the Officer in charge of the Custom House, subject to the general instructions of the Local Government, shall decide what spirits fall within the proviso, and his decision thereon shall be final in law.

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|-----|--|--|
| 26. | Iron (which shall not be taken to include ironmongery, cutlery, or hardware) | ... .. One per cent. <i>ad valorem</i> . |
| 27. | Hops   | ... .. One per cent. <i>ad valorem</i> . |
| 28. | Tobacco, whether manufactured or not manufactured                            | ... .. Ten per cent. <i>ad valorem</i>   |

29. Piece Goods ... .. Five per cent. *ad valorem*.  
 30. Twist ... .. Three and a half per cent.  
*ad valorem*.  
 31. All other articles not includ-  
 ed in the above enu-  
 meration ... .. Seven and a half per cent.  
*ad valorem*.

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SCHEDULE B.

Rates of Duty to be charged upon goods exported by Sea to any Foreign Port as defined in the Consolidated Customs' Act, from any Port in British India.

- |  |                                      |   |
|--|--------------------------------------|---|
| 1. Bullion and Coin                      | ... ..                               | Free.   |
| 2. Precious Stones and Pearls            | ... ..                               | „   |
| 3. Horses and other living Animals       | ... ..                               | „   |
| 4. Rum                                   | ... ..                               | „   |
| 5. Spirits                               | ... ..                               | „   |
| 6. Tobacco, and all preparations thereof | ... ..                               | „   |
| 7. Cotton Wool                           | ... ..                               | „   |
| 8. Flax                                  | ... ..                               | „   |
| 9. Hemp                                  | ... ..                               | „   |
| 10. Books                                | ... ..                               | „   |
| 11. Maps, Prints, and Works of Art       | ... ..                               | „   |
| 12. Teak Timber                          | ... ..                               | „   |
| 13. Coal                                 | ... ..                               | „   |
| 14. Iron                                 | ... ..                               | „   |
| 15. Grain and Pulse of<br>all sorts      | ... Three annas the<br>Indian maund  | } Of forty seers<br>of eighty<br>tolahs to<br>the seer. |
| 16. Saltpetre                            | ... One Rupee the<br>Indian maund    |   |
| 17. Indigo                               | ... Three Rupees the<br>Indian maund |   |
| 18. Lac Dye and Shell<br>Lac             | ... Four per cent.                   | <i>ad valorem</i> .                                     |
| 19. Hides and Skins, raw                 | Two per cent.                        | <i>ad valorem</i> .                                     |

20. Sugar ... Two per cent. *ad valorem*.  
 21. Raw Silk and Silk  
     Chussem ... Two per cent. *ad valorem*.  
 22. All country articles  
     not enumerated  
     or named above Three per cent. *ad valorem*.

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**STAMP DUTIES.**

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ACT NO. XVIII. OF 1865.

[Received the assent of the G. G. on the 10th April 1865.]

1—2. Repeals Act X, 1862, Section 33; and (2) empowers the Governor-General in Council to reduce or remit the Stamp Duties prescribed by that Act.

3—4. Amends Act X, 1862, Schedule B, Art. 11; and (4) makes this Act part of said Act.

WHEREAS it is expedient to amend Act No. X of 1862 (*to consolidate and amend the Law relating to Stamp Duties*); It is enacted as follows:—

Preamble.

I. The thirty-third Section of the said Act No. X of 1862 is hereby repealed, and the following Section shall be read in lieu thereof:—

Act X of 1862, Section 33, repealed.

II. The Governor-General of India in Council may, from time to time, by an order to be published in the Official Gazette, reduce or remit in the whole or any part of the Territories to which the said Act X of 1862 applies, the Stamp Duties prescribed by the said Act and chargeable on all or any of the Deeds, Instruments, and Writings, mentioned in the Schedules thereto, or on any particular class of such Deeds, Instruments, and Writings, or on any of the Deeds, Instruments, and Writings, belonging to such class; or on any of the Deeds, Instruments, and Writings, as aforesaid, when executed or granted by or to any particular class of persons, or by or to any members of such class, and may in like manner cancel

Governor-General in Council may lower rates of Stamp Duty on any Deeds, &c., mentioned in the Schedule, or on any class of such Deeds, &c.

or vary such order to the extent of the powers hereby given. Such cancelment or variation shall also be published in the Official Gazette.

III. Article 11 of Schedule B to Act X of 1862 shall be read as if after the words and figures "Act III of 1859," the following words were inserted, that is to say, "or in Courts of Small Causes established under Section 6 of Act XXII of 1864" (*to make provision for the administration of Military Cantonments.*)

This Act to be taken as part of Act X of 1862.

IV. This Act shall be read with and taken as part of the said Act No. X of 1862.

### PUNJAB.—JURISDICTION OF COURTS.

#### ACT No. XIX. OF 1865.

[*Received the assent of the G. G. on the 10th April 1865.*]

1. Entitles the Act, the Punjab Courts Act, 1865.
2. Interprets the words Assistant Commissioner, Extra Assistant Commissioner, Land, District, District Court, Division, Divisional Court.
3. Defines what shall be a District and what a Division.

4—12. Directs the appointment of seven grades of Courts, and names them; and (5) empowers the Local Government to invest any Tehsildar; and (6) any Naib Tehsildar with judicial powers to extent specified; and (7) gives the Assistant Commissioner and (8) the Assistant Commissioner with special powers jurisdiction to extent specified; and (9) limits and appoints the Criminal Powers of the 1st, 2nd, and 3rd grades; and (10) gives the Assistant Commissioner with full Powers Civil jurisdiction to extent specified; and (11) the Deputy Commissioner unlimited jurisdiction on the Civil side, and Appellate jurisdiction, and the powers of a Magistrate on the Criminal side, and Appellate powers to extent specified; and (12) gives the Commissioner general jurisdiction in Civil suit both original and appellate, the latter from Courts of the 4th, 5th and 6th grades, and the Criminal powers, original and appellate, of Sessions Judge.

13. Directs that every suit shall be commenced in the lowest grade of Court competent to try it.

14. Empowers the Deputy Commissioner to distribute business among the different Courts subordinate to him.



15. Empowers the Commissioner and Deputy Commissioner to withdraw any suit from subordinate Court and try it, and Commissioner to withdraw any appeal from Deputy and try it, or transfer it to other Deputy.

16. Empowers Judicial Commissioner to withdraw any suit or appeal from any subordinate Court, and to refer it to other Court.

17. Allows suits for immoveable property situate in one District, but within several jurisdictions, to be brought in any of the Local Courts having competent jurisdiction, &c.

18—19. Similar provision as to suits for immoveable property situate in same Division, but within several jurisdictions.

20. Empowers Local Government, with sanction of Governor-General in Council, to invest any Officer with the Judicial powers of Deputy or Commissioner, when cases depending are so numerous as not to be disposed of in reasonable time.

21—22. In Districts in which settlement of Land Revenue is in progress, Local Government may empower the Tehsildar, Assistant and Deputy Commissioners, and Commissioner to exercise their powers on the Revenue side of their Courts; and (22) in such Districts the Local Government may invest the Financial Commissioner with the powers of Judicial Commissioner for purpose of trying Special Appeals, &c., and such powers of Judicial Commissioner shall cease when those of Financial Commissioner begin.

23. Excludes from jurisdiction of Revenue Courts and Financial Commissioner cases of succession and inheritance in which the suit relates to other property besides land.

24. Objections to the authority of an Officer not to affect the validity of his decision.

25. Act to come into operation on 1st May 1865.

WHEREAS it is expedient to define the jurisdiction of the

Preamble.

Courts of Judicature in the Punjab and its Dependencies; It is enacted as follows:—

Short title.

I. This Act shall be called "The Punjab Courts Act, 1865."

II. In this Act—

Interpretation clause.

"Assistant Commissioner."

"Assistant Commissioner" includes "Extra Assistant Commissioner."

"Land" does not apply to any land excluded from a Settlement of Land Revenue, whether the

"Land."

Revenue be paid to Government or to the

assignee of Government.

**III.** For the purposes of this Act the local jurisdiction of a Deputy Commissioner shall be deemed a District, and the Court of such Deputy Commissioner shall be deemed the District Court. The local jurisdiction of a Commissioner shall, in like manner, be deemed a Division, and his Court a Divisional Court.

**IV.** There shall be seven grades of Courts in the Punjab, which shall be in addition to any Courts of Small Causes, and to any other Courts established under any Act which may hereafter be passed, unless otherwise provided in such Act, namely :—

- (1.)—The Court of the Tahsildar.
- (2.)—The Court of the Assistant Commissioner with ordinary powers.
- (3.)—The Court of the Assistant Commissioner with special powers.
- (4.)—The Court of the Assistant Commissioner with full powers.
- (5.)—The Court of the Deputy Commissioner.
- (6.)—The Court of the Commissioner.
- (7.)—The Court of the Judicial Commissioner.

**V.** The Local Government may invest any Tahsildar with power to try and determine suits of every description not exceeding three hundred Rupees in value or amount.

**VI.** The Local Government shall also have power, from time to time, specially to invest any Naib Tahsildar with the powers of a Tahsildar as aforesaid within such limits as it may think proper, and to withdraw such powers.

**VII.** The Assistant Commissioner with ordinary powers shall have power to try and determine suits of every description not exceeding one hundred Rupees in value or amount.

VIII. The Assistant Commissioner with special powers shall have power to try and determine suits of every description not exceeding five hundred Rupees in value or amount.

Jurisdiction of Assistant Commissioner with special powers.

IX. The Criminal powers to be exercised by the Courts of the said first, second and third grades respectively, shall be those with which the several Officers presiding in those Courts shall from time to time be invested by the Local Government under Section 23 of the Code of Criminal Procedure.

Criminal powers to be exercised by Courts of the 1st, 2nd, and 3rd grades.

X. The Assistant Commissioner with full powers shall, on the Civil side, have power to try and determine suits of every description under ten thousand Rupees in value or amount, and on the Criminal side to exercise the powers of a Magistrate as defined in the Code of Criminal Procedure.

Jurisdiction of Assistant Commissioner with full powers.

XI. The Deputy Commissioner shall, on the Civil side, have power to try and determine suits of every description without limitation in value or amount, and to hear appeals, where an appeal is allowed by the Code of Civil Procedure in force in the Punjab, from decisions and orders of the first three grades of Courts mentioned in the fourth Section of this Act, and, on the Criminal side, to exercise the powers of a Magistrate as defined in the Code of Criminal Procedure, and to hear appeals according to the provisions of the same Code relating to the hearing of appeals by Magistrates from the sentences and orders of Courts subordinate to the Magistrate of the District. The Deputy Commissioner may also be invested by the Local Government with the powers described in Act No. XV. of 1862 (*to amend the Code of Criminal Procedure*).

Jurisdiction of Deputy Commissioner.

XII. The Commissioner shall, on the Civil side, have power to try and determine suits of every description without limitation in value or amount, and to hear and determine

Jurisdiction of Commissioner.

appeals, where an appeal is allowed by the Code of Civil Procedure in force in the Punjab, from decisions and orders of the Courts of the said fourth and fifth grades, and, on the Criminal side, to exercise the powers of a Sessions Judge as defined in the Code of Criminal Procedure, and to hear appeals from the subordinate Courts according to the provisions of the same Code relating to the hearing of appeals by the Sessions Court.

XIII. Every suit shall be instituted in the Court of the lowest grade competent to try it: Provided that no suit cognizable by a Court of Small Causes shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Court of Small Causes.

XIV. The Deputy Commissioner may direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in such way as he shall think fit: Provided that no Court shall try any suit the value or amount of which shall exceed its proper jurisdiction.

XV. The Commissioner or Deputy Commissioner may withdraw any suit instituted in any Court subordinate to him and try such suit himself, or refer it for trial to any other Court subordinate to him and competent in respect of the value or amount of the suit to try the same. The Commissioner may also withdraw any appeal from the Court of any Deputy Commissioner subordinate to him and try the appeal himself or refer it for trial to the Court of any other Deputy Commissioner in his Division.

XVI. The Judicial Commissioner may withdraw any suit or appeal from any Court subordinate to him other than Courts of Small Causes or Courts of Cantonment Magistrates, and refer such suit or appeal for trial to any other Court

subordinate to him and competent in respect of the value or amount of the suit to try the same.

**XVII.** If the suit be for 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 whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the property in suit, the entire claim be cognizable by such Court. In such case the Court in which the suit is brought shall apply to the District Court for authority to proceed with the same, and the District Court, after hearing the objections, if any, of the defendant, may grant such authority.

**XVIII.** If the suit be for immovable property situate within the limits of different Districts within the same Division, the suit may be brought in any Court otherwise competent to try it, within the jurisdiction of which any portion of such property is situate; but in such case the Court in which the suit is brought shall apply to the Commissioner of the Division for authority to proceed with the same; and such Commissioner, after hearing the objections, if any, of the defendant, may grant authority accordingly. If the suit is brought in any Court subordinate to the Court of the Deputy Commissioner, the application shall be submitted to the Commissioner of the Division through the Deputy Commissioner to whom such Court is subordinate.

**XIX.** If the Districts within the limits of which the immovable property is situate are subordinate to different Commissioners, the application mentioned in the last preceding Section shall be submitted to the Commissioner in whose Division the District in which the suit is brought is situate, and such Commissioner, after hearing the objections, if any, of the defendant, may give authority to proceed with the suit.

XX. Whenever the number of cases depending in any District or Divisional Court shall be so great as to prevent their being disposed of within a reasonable period, the Local Government may, with the previous sanction of the Governor-General of India in Council, invest any Officer with the Civil and Criminal powers of a Deputy Commissioner or Commissioner, as defined in this Act, in such District or Division as the case may be.

XXI. In any District in which a Settlement of Land Revenue is in progress, the Local Government may, on its own authority, empower and direct the Tahsildars, Assistant Commissioners, Deputy Commissioner, and Commissioner in such District, to exercise their respective powers as defined in this Act in suits regarding land, or the rent, revenue, or produce of land, on the Revenue and not on the Civil side of their Courts. The Local Government may also, with the previous sanction of the Governor-General of India in Council, invest any special Officer in such District with the Civil powers of a Commissioner, Deputy Commissioner, Assistant Commissioner, or Tahsildar, as defined in this Act, for the purpose of deciding suits in respect to land, or the rent, revenue, or produce of land; such powers to be exercised on the Revenue side: Provided that in all such suits as aforesaid no deviation shall be allowed from the Rules of Civil Procedure in force, and that the powers given under this Section shall continue only so long as Settlement operations are in progress in the District, and shall cease on the termination thereof.

XXII. In any District in which a Settlement of Land Revenue is in progress, the Local Government may invest the Financial Commissioner with the powers of the Judicial Commissioner for the purpose of trying special appeals from Commissioners and Deputy Com-

missioners in all decisions passed by them in regular appeal under the twenty-first Section of this Act, and with the power of a Court of final appeal in any class of suits regarding land, or the rent, revenue, or produce of land :

Proviso.

Provided that in the trial of such appeals no deviation shall be allowed from the Rules of Civil Procedure in force, and that the power given under this Section shall continue only so long as Settlement operations shall be in progress, and shall cease on the termination thereof. So long as the Financial Commissioner may be invested with powers as aforesaid, the jurisdiction of the Judicial Commissioner in respect to the appeals hereby made cognizable by the Financial Commissioner shall be suspended.

XXIII. Whenever in a case of succession or inheritance the claim shall relate not only to land but to land and other property not permanently attached to the land comprised in the claim, neither the Revenue Courts nor Financial Commissioner shall have jurisdiction under the twenty-first or the twenty-second Section of this Act.

Exclusion of jurisdiction, under Sections 21 and 22, of Revenue Courts and Financial Commissioner.

XXIV. No decision or order passed by any Officer in the Punjab and its Dependencies prior to the passing of this Act, shall be invalid solely on the ground of a doubt existing as to the authority of the Officer who passed the decision or order.

Saving of decisions and orders passed before passing of this Act.

Commencement of Act.

XXV. This Act shall commence and come into operation on the first day of May 1865.

## PLEADERS AND MOOKHTARS.

ACT NO. XX. OF 1865.

[Received the assent of the G. G. on the 10th April 1865.]

Recites the expediency of amending the Law relating to Pleaders and Mookhtars, &c.

*Preliminary.*

1. Entitles the Act, the Pleaders, Mookhtars and Revenue Agents' Act, 1865.

2. Interprets words of Number, and the words Section, Person, Pleader, Collector, Magistrate, Judge, Court, District, District Court, Local Government, High Court, Board of Revenue.

3. Repeals as to Territories to which this Act extends the Scheduled Regulations and Acts.

*Of Pleaders and Mookhtars.*

4—5. Authorizes and requires the High Court, within six months after this Act shall take effect, to make Rules for the qualification, admission, &c., of Pleaders and Mookhtars in the Courts, and for fees to be paid on admission, &c., and (5) excludes from practice persons not admitted according to the Rules, &c.; saving, however, that persons entitled, when this Act comes into operation, to be admitted as Pleaders in the High Court may be admitted without examination.

6. Authorizes Local Government to appoint a Board of Examiners.

7—10.—Requires High Court to enrol the names of admitted Pleaders and Mookhtars; and (8) to cause Certificates of Admission to be issued, (9) on Stamp Paper in form as in Schedule, and (10) such stamps to be graduated as specified.

11—15. Entitles Pleaders who are admitted to plead and act in any Criminal Court or before Board of Revenue, and Mookhtars to appear and act in Civil Court, and appear, plead and act in any Criminal Court, in which (12) they shall previously have procured enrolment for the purpose of practising therein, but these provisions not to apply to Courts established by Royal Charter; and (13) subjects persons practising as Pleaders and Mookhtars to penalties for practising without Certificate, and to disability to recover remuneration for their services; and (14) empowers the High Court to suspend or dismiss any enrolled Pleader or Mookhtar who shall have been convicted of any criminal offence, or (15) shall be guilty of fraudulent conduct in his profession, or for any other reasonable cause.

16—18. Directs the mode of procedure in charges under this Act, the finding of the Court to be reported to the High Court, which shall thereupon acquit, suspend or dismiss the party, and, pending the investigation, the party may be suspended from practising, &c.; and (17) in case of acquittal by any Court other than the High Court, the Judge's Court may call for the proceedings and pass orders thereon; and (18) on suspension or dismissal the party shall deliver up his Certificate, under penalty, and liability to fine if he practises after suspension, &c.



*Of Agents practising in the Revenue Offices.*

19—22. Prohibits persons other than Certificated Pleaders from practising as General Agents before Board of Revenue, &c., and directs by whom Certificates may be signed; and (20) requires enrolment of person admitted; and (21) prescribes the form of Certificate, which shall be for one year, on Stamp Paper, and may be renewed, such stamp (22) to be of specified amounts.

23—24. Directs the Board of Revenue to prepare Rules to define the qualifications for a Certificate, and to satisfy themselves of fitness before Certificate is granted; and (24) Local Government to appoint Examiners.

25. Directs Certificated Agent to be enrolled in office in which he intends habitually to practise.

26—30. Empowers Board of Revenue to suspend or dismiss any Revenue Agent convicted of criminal offence; and (27) who may be guilty of fraudulent conduct, &c., in his office, or for other reasonable cause; and (28) if the latter offence be committed in practice before the Board, the Board after enquiry shall report to the High Court, which, on further enquiry if it sees fit, is to proceed to acquit, suspend or dismiss the party. And pending proceedings of the High Court, the Board of Revenue may suspend the party; and (29) directs the mode of procedure when the offence is committed in an Office subordinate to the Board; and (30) authorizes the Board to call for the record, whenever the acquittal was otherwise than by an order of itself or the High Court.

31—34. Entitles the High Court after enquiry to suspend or dismiss any Mookhtar who has been dismissed or suspended as Revenue Agent; and (32) extends to Pleader and Mookhtar who has been suspended the provisions of Sections 28, 29, 31; and (33) requires delivery up of the Certificate on suspension or dismissal, under penalty specified; and (34) imposes a penalty on persons practising while under suspension or after dismissal.

35—36. Saves the right of the parties concerned in business before any Revenue Office to employ special agent, though not an enrolled practitioner, with the general or special sanction of the Board of Revenue, &c.; which sanction (36) may be revoked, &c.

*Of the Remuneration of Pleaders and Revenue Agents.*

37—39. Directs and authorizes the High Court and Board of Revenue to fix and make a Table of Fees to be allowed as against opposite party; but (38) not for special Agents under Section 35; and (39) allows remuneration to be fixed by private agreement as between the suitor and his own Pleader, &c.

*Miscellaneous.*

40. Entitles suitors to appear, plead and act for any co-suitor; and defendant in criminal proceeding may employ any person to assist him in his defence, but without fee.

41. Directs publication in Gazette of all Rules made under the Act, the same having first been approved by Local Government.

42. Makes Fines under this Act subject to revision by High Court or Board of Revenue.

43—44. Saves to existing Pleaders the right to be enrolled under this Act; and (44) except Section 39, this Act is not to apply to Advocates, Vakeels and Attornies-at-Law already enrolled in High Court, nor to existing Mookhtars of High Court. But High Court may make rules for qualification, admission, &c., of such Mookhtars on the Appellate side, and for the regulation of their Fees.

45—46. Saves the right of High Court Advocates and Vakeels to practise in any Court in which he is not enrolled, with permission of the Court, &c.; and (46) gives High Court Attornies the right to practise in any Court in India, &c.

47—48. Act to come into operation in Bengal on June 1st, 1866, and may be extended by Local Governments to their territories; and (48) from time of extension, Regulations inconsistent with this Act to cease.

Schedule First—Acts, &c., repealed. Second—Form of Pleaders or Mookhtars' Certificates. Third—Form of Revenue Agent's Certificate.

WHEREAS it is expedient to amend the law relating to Pleaders and Mookhtars, and to provide rules for the qualification, admission, enrolment, suspension and dismissal of Revenue Agents; It is enacted as follows:—

Preamble.

*Preliminary.*

Short title.

Agents' Act, 1865."

Interpretation of terms.

subject or context—

Words importing the singular number include the plural, and words importing the plural number include the singular.

Number.

"Section."

I. This Act may be cited as "The Pleaders, Mookhtars and Revenue Agents' Act, 1865."

II. In this Act, unless there be something repugnant or inconsistent in the

"Section" means a Section of this Act.

“Person.” “Person” includes any Company or Association or body of persons, whether incorporated or not.

“Pleader.” “Pleader” includes Vakeels.

“Collector.” “Collector” includes Officers performing any of the duties of a Collector of land revenue.

“Magistrate.” “Magistrate” includes Officers exercising any of the powers of a Magistrate.

“Judge” means the presiding Judicial Officer in every Civil and Sessions Court by whatever title

“Judge.” he is designated.

“Court.” “Court” means all Courts subordinate to the High Court, including Courts of

Small Causes.

“District” means the local jurisdiction of the principal Civil Court of original jurisdiction; and

“District.” “District Court” means such Court, and includes Sessions Courts, and, for the

purposes of this Act, the Courts of a Commissioner and Deputy Commissioner or any other Court in the Territories known as Non-Regulation, exercising like powers as those of a Commissioner and Deputy Commissioner or of a Civil and Sessions Judge.

And in any part of British India in which this Act operates,

“Local Government.” “Local Government” denotes the person authorized to administer the executive

“High Court.” Government in such part: “High Court”

“Board of Revenue.” denotes the highest Civil Court of Appeal, and “Board of Revenue” denotes

the chief Revenue Authority therein.

III. So far as they affect the Territories to which this Act extends, the enactments set forth in the

Laws repealed. first Schedule hereto are repealed, except

so far as they repeal any other enactment, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this Act.

*Of Pleaders and Mookhtars.*

IV. The High Court is hereby authorized and required, within six months after this Act shall take effect in the Territories in which such Court exercises jurisdiction, to make rules for the qualification, admission, and enrolment of proper persons to be Pleaders and Mookhtars of the Courts in such Territories, for the fees to be paid for the examination, admission, and enrolment of such persons, and, subject to the provisions hereinafter contained, for the suspension and dismissal of the Pleaders and Mookhtars so admitted and enrolled. The High Court may also from time to time vary and add to such rules.

V. Except as hereinafter provided, no person shall appear, plead or act as a Pleader, or appear or act as a Mookhtar in any Court to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Mookhtar, as the case may be, pursuant to the provisions of this Act, and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Mookhtar as aforesaid: Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be, or shall be qualified to act as, a Pleader in any Court in such part, by virtue of any law, rule or order in force therein, shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions of this Act, without passing any examination, but subject to the conditions of any certificate or diploma held by him as to the class of Courts in which such certificate or diploma authorizes him to practise.

VI. To facilitate the ascertainment of the qualifications mentioned in the fourth Section, the Local Government shall from time to time appoint persons to be Examiners for the

High Court to make rules for qualification, & .. of Pleaders and Mookhtars.

No person to practise as a Pleader or as a Mookhtar unless qualified under this Act.

Saving of Pleaders already qualified.

Local Government to appoint Examiners.

purposes aforesaid, and make regulations for conducting such examinations.

VII. The High Court shall cause the name of every person who shall be admitted a Pleader or a Mookhtar pursuant to the provisions of this Act, to be enrolled in books to be provided and kept for that purpose in such Court. The Courts shall take judicial notice whether a Pleader or Mookhtar is enrolled or not.

Names of Pleaders and Mookhtars to be enrolled.

VIII. The High Court shall cause certificates, signed by such Officer as the Court shall appoint, to be issued to persons who have been admitted and enrolled under the provisions of this Act as Pleaders or Mookhtars and are entitled to practise as such. Any such certificate, when renewed as provided in the ninth Section, may be issued and signed by the Officer so appointed or by the Judge of the District Court within the limits of whose jurisdiction the holder of the certificate shall then ordinarily practise. Every Judge so renewing a certificate shall notify such renewal to the High Court.

Certificates to be issued to Pleaders and Mookhtars.

IX. Every certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the second Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall be entitled to have his certificate renewed, and on every such renewal the certificate then in the holder's possession shall be cancelled and retained by the Officer or Judge signing the renewed certificate.

Form and duration of certificate.

X. The stamp on the certificate, whether original or renewed, shall be of the following value:—

Value of stamp on certificate.

On a certificate authorizing the holder to practise as a Pleader—

(a.) In the High Court and any subordinate Court—Rupees fifty :

(b.) In the District Courts, subordinate Courts, and Small Cause Courts—Rupees twenty-five :

(c.) In the Sudder Ameens' and Moonsiffs' Courts and in the Courts of Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars—Rupees fifteen :

(d.) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rupees five.

On a certificate authorizing the holder to practise as a Mookhtar—

(e.) In the High Court and any subordinate Court—Rupees twenty-five :

(f.) In the District Courts, subordinate Courts, and Small Cause Courts—Rupees sixteen :

(g.) In the Courts of the Commissioners of Circuit, Magistrates and subordinate Magistrates: in Sudder Ameens' and Moonsiffs' Courts, and in the Courts of Assistant Commissioners, Extra Assistant Commissioners and Tahsildars—Rupees eight :

(h.) In the Moonsiffs' Courts or any Court of first instance not hereinbefore mentioned—Rupees four.

#### XI. Pleaders duly admitted and enrolled under this Act

Pleaders may practise in Criminal Courts and Revenue Offices.

limits of the general jurisdiction of the High Court in which they

Mookhtars may plead in Criminal Courts.

are enrolled. Mookhtars duly admitted and enrolled as aforesaid may, subject to the conditions of their certificates as to the class of Courts in which they are authorized to practise, appear and act in any Civil Court, and may appear, plead and act in any Criminal Court within the same limits.

may appear, plead and act in any Criminal Court, or before any Board of Revenue or in any Revenue Office within the

limits of the general jurisdiction of the High Court in which they are enrolled. Mookhtars duly admitted and enrolled as aforesaid may, subject to the

conditions of their certificates as to the class of Courts in which they are authorized to practise, appear and act in any Civil Court, and may appear, plead and act in any Criminal Court within the same limits.

#### XII. Every person who shall have been admitted to practise

Persons admitted in one Court admissible to practise in other Courts of same or subordinate jurisdiction.

as a Pleader or Mookhtar under the provisions hereinbefore contained may, subject to the conditions of his certificate as to the class of Courts in which he is

authorized to practise, apply to be enrolled in the Court in which he shall desire ordinarily to practise; and on such application he shall be enrolled in a book to be kept for that purpose in such Court. Provided that neither this Section nor the last preceding Section shall apply to any Court established by Royal Charter.

XIII. Except as hereinafter provided, any person who shall practise as a Pleader or Mookhtar in any Civil or Criminal Court or Revenue Office to which this Act extends, without having previously obtained a properly stamped certificate authorizing him so to practise, which certificate shall be then in force, shall be liable by order of such Court or the Officer at the head of such Office to a fine not exceeding ten times the amount of the stamp required by this Act to be impressed on the certificate which he should then have held, and, in default of payment, to imprisonment in the Civil jail for a period not exceeding six calendar months. He shall also be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him as such Pleader or Mookhtar whilst he shall have been without such certificate.

XIV. The High Court may suspend or dismiss any Pleader or Mookhtar enrolled under this Act in such Court, who shall be convicted of any criminal offence.

XV. The High Court may also, after such enquiry as it may deem proper, suspend or dismiss any Pleader or Mookhtar enrolled as aforesaid, who shall be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

XVI. If any Pleader or Mookhtar practising in any Court subordinate to the High Court, shall be charged in such subordinate Court with any such conduct as aforesaid, the Judge or Magistrate of the Court, as the case

Uncertificated persons practising as Pleaders or Mookhtars to be liable to fine or imprisonment and to be incapable of recovering fees.

High Court may suspend or dismiss Pleader or Mookhtar convicted of a criminal offence.

High Court may suspend or dismiss any Pleader or Mookhtar practising therein and guilty of unprofessional conduct.

Procedure when charge of unprofessional conduct is brought in a subordinate Court.

may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the Pleader or Mookhtar at least ten days before the day so appointed; and on such day or on any subsequent day to which the enquiry may be adjourned, the Court shall receive all evidence properly tendered by or on behalf of the party bringing the charge or by the Pleader or Mookhtar, and shall proceed to adjudicate on the charge. If the Judge or Magistrate shall find the charge established, and consider that the Pleader or Mookhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the Pleader or Mookhtar. Such report, when made by any Officer other than the District Judge, shall be submitted to the High Court through the District Judge, who shall accompany the report with any remarks that he may think necessary and an expression of his own opinion on the case. Such report, when made by a Magistrate subordinate to the Magistrate of the District, shall be submitted through the Magistrate of the District to the District Judge, and shall be accompanied by the remarks and opinion of the Magistrate of the District as aforesaid. The Judge or Magistrate may, pending the investigation and the orders of the High Court, suspend the Pleader or Mookhtar from practising as such in his Court

Suspension pending investigation.

XVII. The High Court, in any case in which a Pleader or Mookhtar shall have been acquitted under the last preceding Section otherwise than by an order of the High Court, may call for the record and pass such order thereon as shall seem fit.

High Court may call for the record in case of acquittal under Section 16.

XVIII. When any Pleader or Mookhtar shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Court in which he was practising at the time he was so suspended or dismissed, or to

Dismissed Pleader or Mookhtar to surrender his certificate.



any Court to which he shall be ordered by the High Court to deliver the same. If he fail to make such delivery, he shall be liable, by order of such Court, to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil jail for a term not exceeding three calendar months. If during such suspension or after such dismissal, he shall practise as a Pleader or Mookhtar in any Court, he shall be liable, by order of such Court, to a fine not exceeding five hundred Rupees, and, in default of payment, to imprisonment in the Civil jail for a term not exceeding six calendar months.

*Of Agents practising in the Revenue Offices.*

XIX. No person other than a Pleader duly qualified under the provisions hereinbefore contained, or other than persons authorized by such general or special powers of attorney as are hereinafter mentioned, shall practise as an Agent in any proceeding before the Board of Revenue or in any Office subordinate to such Board, unless he shall have obtained a certificate from such Board in the manner hereinafter provided. Any such certificate, when renewed as provided in the twenty-first Section, may be issued and signed by the Secretary of the Board or by any other Officer authorized by the Board in that behalf, or by the Collector of the District within the limits of whose jurisdiction the holder of the certificate shall practise at the time of renewal.

XX. The Board of Revenue shall cause the name of every person (hereinafter called a Revenue Agent) who shall have obtained such certificate to be enrolled in a book to be provided and kept for that purpose by the Secretary of the Board or other Officer authorized by the Board in that behalf.

XXI. Every such certificate, whether original or renewed, shall be engrossed upon stamp paper to be supplied by the person entitled to the certificate, and shall be in the form contained in the third Schedule to this Act, and shall authorize the holder to practise for the period of one year from the date of the certificate. At

the expiration of such time, the holder of the certificate, if desirous to continue to practise, shall renew his certificate, and on every such renewal the certificate then in his possession shall be cancelled and retained by the Officer or Collector signing the renewed certificate. Every Collector so renewing a certificate shall notify such renewal to the Board of Revenue.

XXII. The stamp on such certificate, whether original or renewed, shall be of the following value :—

Value of stamp.

On a certificate authorizing the holder to practise as a Revenue Agent—

In the Board of Revenue or in any Office subordinate to the Board—Rupees fifteen :

In the Office of a Commissioner or in any Office subordinate to a Commissioner—Rupees ten :

In the Office of a Collector or in any Office subordinate to a Collector—Rupees five.

XXIII. The Board of Revenue shall, before they shall grant any such certificate, satisfy themselves of the qualifications and fitness of the person applying for the same ; and they are hereby authorized and required within six months after the commencement of this Act in the part of British India in which such Board is situate, to prepare rules for the purpose of defining what qualifications shall be required for such certificate.

XXIV. To facilitate the ascertainment of the qualifications mentioned in the last preceding Section, the Local Government shall from time to time appoint persons to be Examiners for the purposes aforesaid and make regulations for conducting the examinations.

XXV. Every person who shall have been admitted to practise as a Revenue Agent under this Act, may, subject to the conditions thereof as to the class of Offices in which he is authorized to practise, apply to be enrolled in the Office in which he shall

Revenue Board to ascertain qualifications of Revenue Agents.

Local Government to appoint Examiners.

Enrolment of Revenue Agent in Office in which he shall usually practise.

desire ordinarily to practise, and on such application he shall be enrolled in a book to be kept for that purpose in such Office. Any such Revenue Agent shall also be entitled, on production of the certificate held by him and subject to the conditions as aforesaid, to practise as a Revenue Agent in all other Revenue Offices within the limits of the Territory under the Board of Revenue in which he is enrolled.

**XXVI.** The Board of Revenue may suspend or dismiss any Revenue Agent practising in any Revenue Office, who shall be convicted of any criminal offence.

Board of Revenue may suspend or dismiss Revenue Agent convicted of criminal offence.

**XXVII.** The Board of Revenue may also, after making such enquiry as it may think proper, suspend or dismiss any Revenue Agent practising before such Board, who may be guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Board may suspend or dismiss Revenue Agent practising before it and guilty of unprofessional conduct.

**XXVIII.** If any Pleader shall, while practising before such Board, be charged with fraudulent or grossly improper conduct in the discharge of his duty in such practice, the Board shall enquire into the charge and report the result to the High Court, and the High Court, after making such further enquiry as it shall think fit, shall proceed to acquit, suspend or dismiss the Pleader, and shall thereupon send notice of such acquittal, suspension or dismissal to the said Board. Pending the investigation and the receipt of the notice last aforesaid, the Board may suspend the Pleader from practising before it.

Procedure when Pleader is charged with unprofessional conduct before the Board of Revenue.

**XXIX.** If any Pleader or Revenue Agent shall be charged with any such conduct in any Office subordinate to the Board of Revenue, the Officer at the head of such Office shall send him a copy of the charge and

Procedure when Pleader or Revenue Agent is so charged in any Office subordinate to Board of Revenue.

also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Such copy and notice shall be served upon the person charged at least ten days before the day so appointed; and on such day or on any other day to which the enquiry may be adjourned, the Officer shall receive all evidence properly tendered by or on behalf of the person bringing the charge, or by the person charged, and shall proceed to adjudicate on the charge. If the Officer find the charge established, and consider that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Board of Revenue, and the Board shall, if the person charged be a Revenue Agent, proceed to acquit, suspend or dismiss him, and shall, if he be a Pleader, forward such report to the High Court in which he is enrolled. The High Court, after making any further enquiry which it shall think necessary, shall proceed to acquit, suspend or dismiss the Pleader so charged, and shall thereupon send notice of such acquittal, suspension or dismissal to the Board by whom such report was forwarded. If the Officer shall be subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with any remarks that he may think necessary and an expression of his own opinion on the case.

XXX. The Board of Revenue, in any case in which a Pleader or Revenue Agent shall have been acquitted under the last preceding Section otherwise than by an order of the High Court or Board, may call for the record and pass such order thereon as shall seem fit, subject, in the case of a Pleader, to the provisions of the twenty-eighth Section.

XXXI. Whenever a Revenue Agent who has been dismissed or suspended by order of the Board of Revenue shall also be a Mookhtar enrolled under the provisions of this Act, the Board of Revenue shall forward a report of the case to the High Court in which he shall be enrolled; and such Court, after making any enquiry which it

Power to Board to call for record.  
Report to High Court when dismissed Revenue Agent is also an enrolled Mookhtar.

may think necessary, may suspend or dismiss him as such Mookhtar.

Section 18 to apply to Vakeel or Mookhtar suspended or dismissed under Sections 28, 29, or 31.

XXXII. The provisions of the eighteenth Section shall apply to any Pleader or Mookhtar suspended or dismissed under the twenty-eighth, twenty-ninth, or thirty-first Section.

XXXIII. When a Revenue Agent shall be suspended or dismissed under any of the foregoing Sections, he shall forthwith deliver up his certificate to the Board of Revenue or the Officer at the head of the Office in which he was practising at the time he was so suspended or dismissed, or to any other Officer whom the Board may order to receive the same. If he fail to make such delivery, he shall be liable by order of the Board or such Officer as aforesaid to a fine not exceeding two hundred Rupees, and, in default of payment, to imprisonment in the Civil jail for a term not exceeding three calendar months.

XXXIV. Every person who shall practise as a Revenue Agent in any Revenue Office in the Territories to which this Act extends, without holding a certificate then in force and without being duly qualified to practise as herein provided, shall be liable by order of the Board or Officer in whose Office he shall so practise to a fine not exceeding Rupees two hundred, and, in default of payment, to imprisonment in the Civil jail for a period which may extend to three calendar months. The person so fined as aforesaid shall be incapable of maintaining any suit for any fee or reward for or in respect of anything done or any disbursement made by him in the course of such practising.

XXXV. Nothing hereinbefore contained shall prevent any person from employing any other person, though not a Revenue Agent enrolled under the provisions of this Act, to commence and prosecute all business or any particular business in which the employer may be concerned in

Dismissed Revenue Agent to surrender his certificate.

Penalty on unqualified person practising as Agent.

Persons authorized by general or special powers of attorney may be Agents.

any Revenue Office: Provided that the person so commencing and prosecuting all or any such business as aforesaid shall hold a general or a special power of attorney, as the case may be, in that behalf, from the person so employing him: Provided also that no person shall act as last aforesaid, unless he shall have received the general or the special sanction, as the case may be, in that behalf, of the Board of Revenue or other Officer authorized by the Local Government to grant such sanction.

Sanction required.

XXXVI. Such general or special sanction, as the case may be, may at any time be revoked or suspended by the Board of Revenue or other Officer as aforesaid by whom it was granted; and any person who, having received such sanction, shall practise under the nineteenth Section during the continuance of such revocation or suspension, shall be liable to the penalties and incur the disabilities mentioned in the thirty-third Section.

*Of the Remuneration of Pleaders and Revenue Agents.*

High Court and Revenue Board to fix fees on Civil and Revenue proceedings.

XXXVII. The High Court shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Courts by any party in respect of the fees of his adversary's Pleader; and the Board of Revenue shall from time to time fix and regulate the fees which shall be payable upon all proceedings in the Revenue Courts and Offices by any party in respect of the fees of his adversary's Pleader or Revenue Agent. Tables of the fees so fixed shall be published in the Official Gazette.

Section 37 not to apply to Agents appointed under Section 35.

XXXVIII. The provisions of the last preceding Section shall not be applicable to Agents appointed under the thirty-fifth Section.

XXXIX. Parties employing Pleaders, Mookhtars or Revenue Agents in any Court or Office, shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and it shall

Clients may make private agreements with their Pleaders Mookhtars or Revenue Agents, as to remuneration.

not be necessary to specify such agreement in the power under which such Pleaders, Mookhtars or Revenue Agents for the time being act. Such agreements shall not be enforced otherwise than by regular suit.

*Miscellaneous.*

**XL.** Any suitor may appear, plead and act in any suit, appeal or other proceeding on behalf of any co-suitor. And in all Criminal Courts, any person defending a case may (with the permission of the presiding Judge or Magistrate) employ any other person, though not a Pleader or Mookhtar duly qualified under the provisions of this Act, to assist him in such defence. But no suitor nor person so appearing, pleading, acting or assisting, shall be entitled to recover any fee or reward therefor.

Suitors may appear, &c., for co-suitors.

Prosecutors or prisoners may employ any assistant.

Fees not recoverable by such persons.

**XLI.** The rules mentioned in the fourth and twenty third Sections and all variations of and additions to such rules, shall be published in three consecutive numbers of the Official Gazette. Rules made under this Act by a High Court not established by Royal Charter shall, before such publication, be submitted to and approved by the Local Government.

Rules to be published in the Gazette.

**XLII.** Every order for imposing a fine which shall be passed under this Act, shall be subject to revision by the High Court if the order shall have been passed by a Court subordinate to the High Court, or by the Board of Revenue if the order shall have been passed by an Officer subordinate to such Board.

Fines subject to revision.

**XLIII.** Any person who at the time that this Act shall come into operation in any part of British India shall be practising as a Pleader in any Court in such part, and who shall wish to be enrolled as a Pleader under this Act, may apply to be so enrolled to the Court in which he is practising. Such Court, if subordinate to the High Court,

Pleaders in subordinate Courts may apply to District Judge for enrolment.

shall forward the application to the High Court. The High Court shall cause the applicant to be enrolled under the provisions of this Act, and, if he be practising in a subordinate Court, shall authorize the District Judge to grant a certificate to the applicant as provided in the eighth, ninth and tenth Sections. Applications for enrolment under this Section, when made by any Pleader practising in a Court subordinate to the District Court, shall be forwarded to the High Court through the District Judge.

XLIV. With the exception of Section thirty-nine this Act shall not apply to Advocates, Vakeels and Attorneys-at-law, admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, nor to Mookhtars practising in such Court: Provided that the High Court shall have power to make rules for the qualification, admission, enrolment, suspension and dismissal of the Mookhtars practising on the appellate side of such Court and to prescribe penalties for persons practising contrary to such rules or any of them, and from time to time to vary such rules and penalties. Provided also that the High Court may from time to time fix and regulate the fees which shall be payable on all proceedings on the appellate side of such Court by any party in respect of the fees of his adversary's Vakeel. The rules, penalties and fees so made, prescribed and fixed and every variation thereof shall be published in three consecutive numbers of the Official Gazette.

XLV. Every person now or hereafter enrolled as an Advocate or Vakeel on the Roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court in British India other than a High Court on whose Roll he is not enrolled, or in any such Court with the permission of the Court,

Act not to apply to Advocates, &c., admitted and enrolled by any High Court under Letters Patent.

Advocates and Vakeels enrolled in a High Court may practise in any Court other than a High Court in which they are not enrolled.



and in any Revenue Office, subject nevertheless to the rules in force relating to the language in which the Court or Office is to be addressed by Pleaders or Revenue Agents. Provided that no such Vakeel shall be entitled to practise under this Section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction.

XLVI. Every person now or hereafter enrolled as an Attorney on the Roll of any High Court shall, notwithstanding anything hereinbefore contained, be entitled as such to practise in any Court of British India other than a High Court established by Royal Charter and in any Revenue Office.

XLVII. This Act shall take effect in the Territories under the Governments of the Lieutenant-Governors of Bengal and the North-Western Provinces, respectively, on the first day of January 1866, and may be extended by order of any other Local Government to the Territories subject to such Government. Every such order shall be published in the Official Gazette.

XLVIII. From the date on which this Act shall be extended by the Local Government under the provision contained in the last preceding Section to the Territories subject to such Government, so much of the Regulations in force therein as is in any way inconsistent with, or repugnant to, any of the provisions of this Act, shall cease to have effect in such Territories except as to the recovery and application of any penalty for any offence which shall have been incurred before such extension of the Act.

## FIRST SCHEDULE.

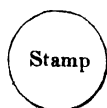
*Regulations and Acts and parts of Regulations and Acts repealed so far as they affect the Territories to which this Act extends.*

Number and date of Regulations.	What Code.	Title.	Extent of Repeal.
Regulation XXVII, 1814.	Bengal Code.	For reducing into one Regulation, with amendments and modifications, the several Rules which have been passed regarding the office of Vakeel or Native Pleader in the Courts of Civil Judicature.	So much as has not already been repealed.
Regulation VII, 1822.	Bengal Code.	For declaring the principles according to which the settlement of the land revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspore, and its dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other Officers employed in making, revising, or superintending Settlements; for continuing, with certain exceptions, the existing leases within the said Provinces for a further term of five years; for defining, settling, and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent, or produce thereof; and for vesting the Revenue Authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent, and produce of land.	
Regulation IX, 1825.	Bengal Code.	For extending the operation of Regulation VII, 1822; for authorizing the Revenue Authorities to let in farm estates under temporary leases, on the default of the Malguzars, or to hold the same khas for a term of years; for modifying and adding to the Rules contained in Regulation II, 1819; and for making certain other amendments in the existing Regulations.	Section 25.
			So much of Clause 9, Section 5, as provides that Section 25 of Regulation VII of 1822, shall be applicable to cases investigated by Collectors under the Rules of Regulation II of 1819, or under the provisions of Regulation IX of 1825.

Number and date of Acts.	Title.	Extent of Repeal.
Act I of 1846.	For amending the law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.	} The whole.
Act XVIII of 1852.	To amend the law relating to Pleaders in the Lower Provinces of the Presidency of Bengal.	} The whole.
Act XX of 1853.	To amend the law relating to Pleaders in the Courts of the East India Company.	} The whole.
Act X of 1859.	To amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	} So much of Section 71 as directs that no fee for any Agent shall be charged as part of the costs of suit in any case under the said Act, and the whole of Section 149.

## SECOND SCHEDULE.

*Form of Pleader or Mookhtar's Certificate.*



Pursuant to "The Pleaders, Mookhtars, and Revenue Agents' Act, 1865," I hereby certify that A. B. Pleader [*or Mookhtar*] whose place [*or places*] of business is [*or are*] at            hath this day delivered and left with me a Declaration in writing signed by him, and containing his name and place [*or places*] of business and the Court [*or Courts*] of which he is admitted a Pleader [*or Mookhtar,*] together with the year in which he was so admitted; and I hereby further certify that he is duly enrolled in the High Court of Judicature at Fort William in Bengal [*or the Sudder Court of the North-*

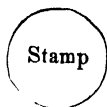
Western Provinces, *or as the case may be*], and that he is entitled to practise as a Pleader [*or Mookhtar*] in the District Courts, Subordinate Courts, and Small Cause Courts, [*or the Sudder Court of the North-Western Provinces, and any Subordinate Court, or the Sudder Ameens' Courts, or the Moonsiffs' Courts, as the case may be*], and to practise as a Revenue Agent before the Board of Revenue of the Lower Provinces [*or of the North-Western Provinces, or as the case may be*] for the period of one year from the date hereof. Given under my hand this  
day of 186 .

C. D.

Registrar [*or as the case may be*] of the High Court of Judicature at Fort William in Bengal [*or of the Sudder Court of the North-Western Provinces, or as the case may be.*]

### THIRD SCHEDULE.

#### *Form of Revenue Agent's Certificate.*



Pursuant to "The Pleaders, Mookhtars, and Revenue Agents' Act, 1865," I hereby certify that A. B.

of is entitled to practise as a Revenue Agent before the Board of Revenue of the North-Western Provinces [*or of the Lower Provinces, or as the case may be*], and in any Office subordinate thereto in such Provinces for the period of one year from the date hereof. Given under my hand this  
day of 186

C. D.

Secretary to the Board of Revenue of the North-Western Provinces [*or the Lower Provinces, or as the case may be.*]

**PARSEE INTESTATE SUCCESSION.**

ACT No. XXI. of 1865.

[Received the assent of the G. G. on the 10th April 1865.]

Recites expediency of defining and amending the Law of Intestate Succession among Parsees.

*Of Property.*

1—7. As to division on death of Parsee leaving widow and children of both sexes; (2) on death of wife leaving a widower and children; (3) leaving children but no widow; (4) leaving children but no widower; (5) as to share of widow or widower of a deceased child and the children of such child; (6) as to distribution in case deceased leaves a widow or widower, but no lineal descendants but father or mother or both surviving, or neither father or mother, but relations on the father's side, or no relations on the father's side; or (7) neither lineal descendants nor widow or widower; and as to shares of next of kin in such case.

8. Exempts Parsee succession from operation of the Indian Succession Act, part 3, and part 4, except S. 25, part 5, and S. 43.

Schedules First, Second.

WHEREAS it is expedient to define and amend the Law relating to Intestate Succession among the Parsees; It is enacted as follows:—

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 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 widow 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 among widower and children of Intestate.

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 male Intestate who leaves no widow.

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.

V. If any child of a Parsee Intestate shall have died in his or her lifetime, the widow or widower and

Division of pre-deceased child's share of Intestate's property among the widow or widower and issue of such child.

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.

VI. Where a Parsee dies leaving a widow or widower, but

Division of property when the Intestate leaves a widow or widower, but no lineal descendants.

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 the father's side, the Intestate's widow or widower shall take the whole.

VII. When a Parsee dies leaving neither lineal descendants

Division of property when the Intestate leaves neither widow nor widower nor 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.

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 twenty-five, the whole of Part V, and Section forty-three.

Exemption of Parsees from certain parts of the Indian Succession Act, 1865.

1865, shall not apply to Parsees (that is to say) the whole of Part III, the whole of Part IV excepting Section twenty-five,

the whole of Part V, and Section forty-three.

### 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 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.

#### LUCKNOW MUNICIPAL COMMITTEE.

#### ACT No. XXII of 1865.

[*Received the assent of the G. G. on the 17th April 1865.*]

1—2. Repeals Act 18, 1864, S. 21; and (2) empowers Government to extend that Act to any place under the administration of the Government of India.

3. This Act to be taken as part of Act 18, 1864.

WHEREAS it is expedient to amend Act No. XVIII of 1864

Preamble.

(to provide for the appointment of a *Municipal Committee for the City of Lucknow*);  
It is enacted as follows :—



I. Section twenty-one of the said Act No. XVIII of 1864 is hereby repealed, and the following Section shall be read in lieu thereof.

II. It shall be lawful for the Governor-General of India in Council, by Order published in the Gazette of India, to extend the said Act to any place under the immediate administration of the Government of India; and when so extended, it shall have effect in such place as if the name of such place were substituted throughout the said Act for the name "Lucknow." The Governor-General of India in Council shall by such Order declare how many persons shall be members, and what and how many persons shall be *ex-officio* members, of the Committee to be constituted in the place to which the said Act shall have been so extended: Provided that the number of such *ex-officio* members shall not be more than one-third of the number of all the members of such Committee.

This Act to be construed with Act XVIII of 1864.

III. This Act shall be read and taken as part of the said Act No. XVIII of 1864.

### PUNJAB CHIEF COURT OF JUDICATURE.

#### ACT No. XXIII OF 1865.

[Received the assent of the G. G. on the 17th April 1865.]

Recites expediency of amending the constitution of the Court of the Judicial Commissioner of the Punjab, &c.

1. Interprets the words Punjab, Lieutenant-Governor, Chief Court, Judge, Registrar, Magistrate, Barrister, Section, and as to construction of words of number, and words of gender.

2—5. Names the Court, the Chief Court of the Punjab, and directs that it shall consist of two or more Judges, one of whom is to be a Barrister to be appointed by the G. G.; and (2) to rank according to seniority of appointment; and (3) hold their offices during pleasure; and to take specified oath on assuming their office.

6—8. Authorizes the Judges to appoint a Registrar, &c. with duties to be defined by rule, &c.; and (7) to appoint a Deputy Registrar and necessary Clerks; and (8) all Officers and Clerks to be liable to dismissal by the Court.

9. Directs that this Court shall have a seal with specified inscription.

10—11. Defines who may appear and plead in the Court, *e. g.* Government Solicitor for Government, suitors for themselves and co-suitors, Advocates, Vakeels, or Attornies of the High Court or Sudder Court of the North-West Provinces, but no person to appear as Pleader without being generally or specially licensed, &c.; and (11) these licenses may be revoked by the Court.

12. Fees of Pleaders (but not of Advocates) to be subject to Rules, &c.

13. Constitutes the Chief Court one sole Court of Appeal from all the Civil and Criminal Courts of the Punjab in matters appealable to the High Court save as respects specified classes of suits while a settlement of Land Revenue is going on.

14—17. Empowers the Chief Court to withdraw suits from Subordinate Courts; and (15) to order transfer of suits or appeals from one Court to another; and (16) to call for records of Small Cause Courts; and (17) directs that all special appeals from all grades of Courts shall be to Chief Court only.

18—19. Directs that Chief Court Procedure (save as otherwise specially enacted) be regulated by Punjab Rules; and (19) existing rules of law or equity and good conscience to be continued until altered.

20—22. Empowers the Chief Court to try European British subjects, and commitments of such to be for trial by the Chief Court; such trial to be at place ordered by Chief Court; and (21) the proceedings and commitments shall be sent by the Committing Justices to the Registrar of the High Court; and (22) empowers the Chief Court to amend, &c., the charge.

23. Entitles the accused to have a copy of the depositions.

24—25. Accused to be tried on charge recorded; and (25) if such charge appears to be clearly unsustainable, Judge may record a *nolle prosequi*, the effect of which shall be an acquittal if for three years afterwards no fresh charge is preferred.

26. Directs that the Court shall ordinarily hold its sittings at the seat of Government and at other places as convenience may require with the approval of Government.

27—29. Directs that commitments of European British subjects, &c., for intermediate custody shall be to the nearest Criminal Jail until the Chief Court has ordered the place for trial, after which the further custody is to depend on the place of trial; and (28) empowers the Chief Court to issue general directions as to places for trial and commitments within specified districts, &c.; and (29) all trials upon commitments of European British subjects shall be by Jury.

30. Directs the summoning of jurors by the Court of Session when notice has been given of where the Chief Court Sessions are to be held.

31—32. Entitles European British subjects to require that the majority of the Jury shall be Europeans or Americans, or both; and (32) directs the Jury to be 12, and requires a majority of nine for a verdict of guilty.

33. Directs that sentences of death in the Chief Court shall not require confirmation, and dispenses with explanation of reasons for sentences to other than death on offences capitally punishable.

34. Dispenses with special form for passing sentence or recording findings and sentence.

35—36. Authorizes the Judge to reserve for opinion of the Court any question of law or admissibility of evidence arising at a Criminal trial; and if no question be reserved shall forward prisoner with a warrant in pursuance of sentence, &c., or if question be reserved shall remand him to jail, &c; to await final decision, &c.; and (36) save as otherwise directed the Civil Criminal Court Procedure shall be the Code of Criminal Procedure, &c.

37—41. Makes European British subjects amenable to law for offences committed in Foreign State, &c.; and (38) may be ordered to be tried in Chief Court; and (39) the same as to Officers of Government; and (40) prescribes the form of commitment in all such cases; and (41) makes the order of Government sufficient warrant for the trial, &c.

42. Makes two Judges necessary to reverse or modify any sentence or decree of Civil or Criminal Court.

43. Empowers the Chief Court to make rules for the exercise by one or more Judges of the original or appellate jurisdiction.

44. Gives the Chief Court superintendence over all Courts subject to its appellate jurisdiction, and to call for return and make general rules, &c.

45. Transfers to Chief Court all proceedings pending in Court of Judicial Commissioner, &c.

46. Provides the manner in which differences shall be settled if only two Judges and they differ.

47—48. Directs that cases referred under this Act to the High Court shall be heard by not less than three Judges, &c.; and (48) provides that the parties to such cases may appear, plead, and act in person, or by an Advocate or Vakeel; and as to mode of returning the opinion of the High Court.

49—50. Directs the Chief Court to keep Registers, Books, Accounts, &c.; and (50) establishes equality of competency in every Judge, except as excepted by the Act or by Rules.

51. Saves Sections 10, 11, and 12 of this Act when the Pleaders', Mookhtars, and Agents' Act, 1865, shall be extended to the Punjab.

52. Names the Act, the Punjab Chief Court Act, 1865.

53. The Act to come into operation on day to be fixed by the Governor-General in Council.

**WHEREAS** it is expedient to amend the constitution of the Court of the Judicial Commissioner of the Punjab and its Dependencies, and to invest the Judges of the Court constituted under this Act with an original jurisdiction for the trial of certain Civil and Criminal cases; It is enacted as follows :—

Interpretation of terms.

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

“ Punjab ” means the Territories for the time being under the Government of the Lieutenant-Governor of the Punjab and its Dependencies.

“ Punjab.”

“ Lieutenant-Governor.”

“ Lieutenant-Governor ” means the Lieutenant-Governor for the time being of the Punjab.

“ Chief Court.”

“ Chief Court ” means the Chief Court of the Punjab constituted under this Act.

“ Judge,” “ Registrar,” and other words denoting any particular Officer respectively include any person

“ Judge,” “ Registrar.”

for the time being authorized to act as such

Judge, Registrar or other Officer.

“ Magistrate ” denotes any person exercising any of the powers of a Magistrate as defined in the Code of Criminal Procedure.

“ Magistrate.”

“ Barrister.”

“ Barrister ” includes Barristers of England or Ireland, and Members of the Faculty of Advocates in Scotland.

“ Section.”

“ Section ” denotes a Section of this Act. •

Number.

Words in the singular include the plural : words in the plural include the singular.

Gender.

Words importing the masculine gender include females.

II. The Court constituted under this Act shall be styled the Chief Court of the Punjab, and shall consist of two or more Judges, who shall be appointed by the Governor-General of India in Council, and

Constitution of Chief Court.

of whom one at least shall always be a Barrister of not less than five years' standing: Provided that the person who at the time of the constitution of the Chief Court shall be the Judicial Commissioner of the Punjab, shall become a Judge of such Court without further appointment for that purpose.

III. The Judges of the Chief Court shall have rank and precedence in the Court according to the seniority of their appointments as such Judges.

IV. The Judges of the Chief Court shall hold their offices during the pleasure of the Governor-General of India in Council.

V. Previously to entering on the execution of the duties of his office, every Judge appointed under this Act shall make or subscribe the following declaration before the Lieutenant-Governor or such authority or person as he may commission to receive the same:—

“ I, A. B., appointed Judge of the Chief Court of the Punjab, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment.”

VI. The Judges of the Chief Court with the sanction of the Lieutenant-Governor may, from time to time, appoint a person to be the Registrar of the said Court. The Registrar shall be the principal Ministerial Officer of the Court, and shall have such powers, and perform such duties, as shall be given and assigned to him by the Court by any rule duly made by the Court under the forty-fourth Section.

VII. The Judges of the Chief Court may, from time to time, and subject to any rules and restrictions which may be prescribed by the Governor-General of India in Council, appoint a Deputy Registrar and such and so many Clerks and other Ministerial Officers as shall be found necessary for the administration of justice by such Court, and the due execution of the powers and authorities given to it by this Act.

VIII. Every Officer appointed under either of the last two preceding Sections shall be liable to dismissal by order of the Chief Court: Provided that neither the Registrar nor Deputy Registrar shall be removed from office without the sanction of the Lieutenant-Governor.

IX. The Chief Court shall have, and use as occasion may require, a Seal with this inscription "The Seal of the Chief Court of the Punjab," to be made under the directions of the Lieutenant-Governor; and all summonses, decrees and other process issuing out of the Court shall be stamped with such Seal, and signed by a Judge or the Registrar or Deputy Registrar of the Court.

X. Any person duly authorized by the Secretary of State for India in Council to appear, plead or act on his behalf; (2) any suitor appearing, pleading or acting on his own behalf or on behalf of a co-sutor; (3) any person who, for the time being, is an Advocate, Vakeel or Attorney-at-law of any of the High Courts of Judicature in India or of the Sudder Court of the North-Western Provinces,—shall be permitted to appear and act as the Pleader of any suitor in the Chief Court in any suit or touching any matter whatever.

Save as aforesaid, no person shall be permitted to appear or act as the Pleader of any suitor in the Chief Court in any suit or touching any matter whatever, unless such person shall have been previously licensed by the Court to act for the suitors of such Court generally, or specially for the particular occasion. It shall be lawful for the Judges to make rules for the qualifications and admission of proper persons to act as Pleaders in the Court.

XI. The Chief Court may for sufficient reason revoke any license which the Court shall at any time grant to any person to act generally or specially as a Pleader under this Act, and

may for sufficient reason suspend any person whatsoever from appearing or acting as a Pleader in any suit, or touching any matter.

XII. The fees to be received by any Pleader, other than an Advocate of a High Court, shall be subject to the order and control of the Court, and no fees shall be recoverable by any such Pleader except such fees shall be allowed under the forty-fourth Section.

XIII. The Chief Court shall be the highest Court of Appeal from the Civil and Criminal Courts in the Punjab, and shall (subject to the provision hereinafter contained) be the only Court exercising appellate jurisdiction in such cases (whether relating to the title or succession to land or to the possession or any right in respect of land or otherwise) as are subject to appeal to the highest Civil and Criminal Court in the Punjab, by virtue of any law or practice now in force, or as shall become subject to appeal to the Chief Court by virtue of any law hereafter made by the Governor-General of India in Council. Provided that when a Settlement of land Revenue shall be in progress, and the Local Government, under Act No. XIX of 1865 (*to define the jurisdiction of the Courts of Judicature of the Punjab and its Dependencies*) shall have invested the Financial Commissioner of the Punjab with the power of a Court of final appeal in any class of suits regarding land, or the rent revenue or produce of land, the jurisdiction of the Chief Court shall, so far as regards such class of suits, be barred during the continuance of the power with which such Commissioner shall have been so invested.

XIV. The Chief Court may remove and try and determine as a Court of original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the Chief Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice.

XV. The Chief Court may withdraw any suit or appeal from any Court subject to its superintendence other than a Court of Small Causes or a Court of a Cantonment Magistrate, and refer such suit or appeal for trial to any other subordinate Court competent in respect of the value or amount of the suit to try the same.

Power to transfer suits and appeals from one subordinate Court to another.

XVI. The Chief Court may call for the record of any case decided by any Court of Small Causes, or on appeal by any Court subject to its superintendence in which no appeal shall lie to the Chief Court, if such Court of Small Causes, or subordinate Court in hearing the appeal shall appear to have exercised a jurisdiction not vested in it by law.

Power to call for record of cases decided by subordinate Courts.

XVII. All special appeals preferred after the date on which the Chief Court is established, from the decrees of Civil Courts of whatever grade in the Punjab, shall lie to and shall be heard by the Chief Court only, and not by any other Court.

Special appeal from Courts in Punjab to lie only to Chief Court.

XVIII. Save as in this Act is otherwise provided, the proceedings in the Chief Court in Civil suits of every description between party and party shall be regulated by the rules relating to Civil Procedure for the time being in force in the Punjab.

Regulation of proceedings in Civil suits.

XIX. In the exercise of its Civil jurisdiction, Original as well as Appellate, such rules of law or equity and good conscience shall (until otherwise provided) be applied by the Chief Court in each case coming before it, as would have been applicable to such case by any local Court having jurisdiction therein.

In exercise of its Civil jurisdiction, law of the local Courts to apply.

XX. The Chief Court shall have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial; and from the date on which this Act shall come into operation, no commitment of a European British subject for trial by a High Court of Judicature, shall be made by any Court or Officer in the Punjab; but every commitment which, if this Act had not

Power to try European British subjects.



been passed, could have been made to a High Court, shall be made to the Chief Court. Whenever any such European British subject shall be committed or bailed for trial before the Chief Court, the Chief Court shall direct at what place within the limits of its jurisdiction the trial shall be held.

XXI. Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any European British subject for trial before the Chief Court, shall, together with the record of the preliminary enquiry and all recognizances and other documents and any weapon or article of property connected with the case, deliver to the Registrar of the Chief Court a written instrument of charge signed by him, stating for what offence such European British subject is so committed or held to bail.

Charge to be delivered to Registrar with commitment of European British subject.

XXII. The Chief Court shall consider the charge, and may, if it appear necessary or expedient so to do, amend, alter or add to the same. The charge, with such amendments, alterations or additions, if any, shall be recorded in the Chief Court, and the person charged shall be entitled to have a copy of such charge with such amendments, alterations or additions (if any) gratis.

Chief Court to consider, and if it will, to amend, alter or add to the charge.

Charge with amendments, alterations or additions (if any) to be recorded.

XXIII. The person charged shall also, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions of the witnesses upon whose depositions he has been so committed or held to bail, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

Accused to have copies of examinations.

XXIV. Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the Chief Court in due course of law, and (subject to the provisions contained in the Code of Criminal Procedure as to the amendment and alteration of charges, and subject also to the provisions of the next following Section) shall be tried upon the charges so recorded.

Effect of charge.

XXV. When any such charge shall have been recorded in the Chief Court as aforesaid, and shall at any time before the commencement of the trial of the person charged appear to the Chief Court to be clearly unsustainable, an entry to that effect may be made on the charge by a Judge of the Court. Such entry shall have the effect of staying proceedings upon the charge, but shall not operate as an acquittal of the person charged unless and until three years from the time of making the entry shall have elapsed, at the expiration of which period, if no fresh charge have been brought on the same matter, he shall be considered as having been acquitted.

XXVI. The Chief Court shall ordinarily hold its sittings at the seat of Government of the Punjab: but it may, from time to time, with the approval of the Lieutenant-Governor, hold sittings at such other places in the Punjab as shall seem convenient. Due notice shall be given beforehand in the Official Gazette of all sittings intended to be held for the trial of cases in the exercise of the original Criminal jurisdiction of the Court.

XXVII. Pending the directions of the Chief Court as to the place of trial, every such European British subject as is referred to in the twenty-first Section shall (if not out on bail) be committed by the Justice of the Peace or Magistrate for intermediate custody to the nearest Criminal jail in which he can be most conveniently confined. If the trial shall be directed to be held at the usual place of sitting of the Court, the Justice of the Peace or Magistrate shall bind over the person charged to appear and take his trial at such usual place of sitting, or shall commit him to the jail at such place. If the Chief Court shall direct that the person charged be tried elsewhere than at its usual place of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and take his trial at the place directed, or shall, if necessary, cause him to be removed to the Criminal jail of or

Chief Court may order an unsustainable charge not to be proceeded with.

Effect of such order.

Places of holding sittings.

Procedure pending directions of Chief Court as to place of trial of European British subject.

nearest to the place at which he is directed to be tried ; and the Officer in charge of such Criminal jail shall keep him in safe custody until discharged in due course of law.

**XXVIII.** It shall be lawful for the Chief Court to direct that all European British subjects committed or bailed for trial within certain specified Districts, or during certain specified periods of the year, shall be tried at the usual place of sitting of the Court, or to direct that they shall be tried at a particular place named, and also to order that such European British subjects shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners.

Chief Court may order European British subjects committed in certain Districts in certain seasons of the year to be tried at a particular place and confined in a particular jail.

**XXIX.** All trials under the twentieth Section shall be by Jury.

**XXX.** Whenever the Chief Court shall have given notice of its intention to hold sittings at any place (whether at the seat of Government of the Punjab or otherwise) for the exercise of its original Criminal jurisdiction, the Court of Session at such place shall take and cause to be taken the measures prescribed by Sections three hundred and thirty-six to three hundred and forty, both inclusive, of the Code of Criminal Procedure for the summoning of Jurors ; and, in addition to the persons so summoned as Jurors, the said Court of Session shall, if it shall think needful, after communication with the Com-

Trials under Section 20 to be by Jury.

manding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the Military Service resident within ten miles of its place of sitting as the Court shall consider to be necessary to make up the Juries required for the trial of European British subjects charged with offences before the Chief Court as aforesaid. All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such Juries notwithstanding anything contained in the Code of Criminal Procedure ; but no Commissioned or Non-Commission-

Summoning of Jurors to serve on trials.

Military men not exempt.

ed Officer shall be summoned whom his Commanding Officer shall desire to have excused on the ground of urgent Military duty, or for any other special Military reason. The Juries for the trial of European British subjects as aforesaid shall be formed in the manner required by the Code of Criminal Procedure, and by this Act from the persons summoned under the said Sections of the Code of Criminal Procedure, and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or, if no such Officers have been summoned, then solely from the persons summoned under the same Sections.

XXXI. If any European British subject charged as aforesaid shall so require before the Jury shall be empannelled, the majority of the Jurors shall consist of Europeans or Americans, or both Europeans and Americans.

XXXII. On every trial of an European British subject under this Act, the Jury shall consist of twelve persons, and unanimity, or a majority of not less than nine with the concurrence of the presiding Judge, shall be necessary for a verdict of guilty. In default of such unanimity, or of such majority and concurrence, the prisoner shall be acquitted.

XXXIII. So much of the three hundred and eightieth Section of the Code of Criminal Procedure as requires the confirmation by the Sudder Court of sentences of death passed by a Court of Session, and so much of the said Section as requires from the Court a statement of the grounds on which a person convicted of an offence made punishable by death by the Indian Penal Code has been sentenced to a punishment other than death, shall not apply to sentences by the Chief Court passed in the exercise of its original Criminal jurisdiction.

XXXIV. So much of the twenty-sixth Chapter of the Code of Criminal Procedure as requires judgment to be passed by a Criminal Court in any particular form, and as requires that the sentence or finding shall be recorded

in any particular form, shall not apply to judgments, sentences, or findings in trials before the Chief Court acting in the exercise of its original Criminal jurisdiction; but the Chief Court shall pass judgment, and shall record or cause to be recorded the sentence and finding in such form as it shall think proper.

**XXXV.** When any person has been convicted of an offence before a Judge of the Chief Court acting in the exercise of its original Criminal jurisdiction, the Judge, if he think proper, may reserve for the decision of a Court consisting of such Judge, and one or more other Judge or Judges of the Chief Court, any question of law or of the admissibility of evidence which has arisen in the course of the trial of such

person. If the Judge reserve no such question, he shall forward the prisoner with a copy of his sentence and a warrant for the execution of the same to the Magistrate or other Officer in charge of the jail of the District or place in which the trial was held, and, on the receipt of the warrant, such Magistrate or other Officer shall proceed as provided in the three hundred and eighty-fifth Section of the Code of Criminal Procedure. If the Judge reserve any question of law or of the admissibility of evidence, the person convicted shall, pending the decision thereon, be remanded to jail. If the decision on the question be adverse to the person convicted, the Court shall send a copy of its sentence and a warrant for the execution of the same to the Magistrate or other Officer in charge of the jail to which the prisoner shall have been remanded, and such Magistrate or other Officer shall proceed as provided in the same Section.

**XXXVI.** Save as is hereinbefore otherwise provided, the Code of Criminal Procedure shall apply to the constitution and formation of Juries for the purpose of trials before the Chief Court acting in the exercise of its original Criminal jurisdiction, and to trials before such Court, and to sentences by such Court, and to the carrying into execution of such sentences.

Power to single Judge to reserve for Chief Court any question of law or evidence.

Procedure where no such question reserved.

Save as aforesaid, Criminal Procedure Code to apply to Juries, trials, sentences, and execution.

XXXVII. Every European British subject apprehended within the Punjab, or delivered into the custody of a Magistrate within the Punjab wherever apprehended, shall be amenable to the law for any offence committed by him within the territory of any Foreign Prince or State, and may be bailed or committed for trial as hereinafter provided on the like evidence as would warrant his being bailed or committed for trial for the same offence if it had been committed in the Punjab.

British subjects to be amenable for offences committed in foreign territory.

XXXVIII. The committing Magistrate immediately and before the trial shall report the case to the Lieutenant-Governor, and shall obey the orders which he shall receive thereon, and the Lieutenant-Governor may order the trial to be had before the Chief Court.

Committing Magistrate to report to the Lieutenant-Governor.

XXXIX. When the offence is charged to have been committed in the territory of any Foreign Prince or State, administered by Officers acting under the authority of the Government of India, in which territory, a Court competent to try the person charged is established by authority of the Governor-General of India in Council, the Lieutenant-Governor may order such person to be conveyed in custody out of the Punjab for the purpose of delivering him up for trial before such Court.

If the offence is committed where there is a competent Court, Lieutenant-Governor may take steps to have trial there.

XL. When the person charged is committed to custody, the form of the warrant shall specify the commitment to be until the orders of the Lieutenant-Governor can be received and acted on. When he is bailed, the form of the bail-bond shall be in the first instance to appear before the Magistrate on a certain day assigned, allowing reasonable time for the receipt of the orders of the Lieutenant-Governor, and on such subsequent days as the Magistrate shall, from time to time, require. If the Lieutenant-Governor shall order the person charged to be tried in the Chief Court, the Magistrate may cause the bail-bond to

Form of warrant of commitment and of bail-bond.

be renewed in the usual form to appear and take his trial in such Court.

**Order of Lieutenant-Governor to be full authority.**  
**Order of Lieutenant-Governor to be full authority.**  
 XLI. In either case the special order of the Lieutenant-Governor shall be deemed full authority either for the trial of the person charged within the Punjab, or for conveying him in custody out of the Punjab as aforesaid.

**Two Judges at least necessary to reverse or modify sentences or decrees of Sessions or Civil Judges.**  
 XLII. No decree of any Civil Court shall be reversed or modified on appeal, and no sentence of any Criminal Court shall be reversed or modified on appeal or revision, save by the order of not less than two Judges of the

Chief Court.

**Chief Court may provide for exercise of the Court's jurisdiction by one or more of its Judges.**  
 XLIII. Save as herein otherwise provided, the Chief Court may by its own rules provide for the exercise, by one or more Judges, of the original and appellate jurisdiction, vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice.

**Chief Court to superintend subordinate Courts, and to frame rules of practice for itself and such Courts.**  
 XLIV. The Chief Court shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns, to make and issue general rules for regulating the practice and proceedings of the Chief Court and of such subordinate Courts, to give and assign to the Ministerial Officers of the said Chief Court and subordinate Courts respectively such powers and duties as may seem fit, to frame and prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Officers, and to settle Tables of Fees to be allowed to Pleaders, and, from time to time, to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled, shall be published in the Official Gazette, and, after being so published, shall be used and observed in the Chief Court: Provided that such general

rules and forms and tables be not inconsistent with the provisions of this Act or any law in force, and shall, before they are issued, have received the sanction of the Lieutenant-Governor.

**XLV.** The Chief Court shall have jurisdiction in all proceedings pending in the Court of the Judicial Commissioner of the Punjab at the time of the constitution of the Chief Court; and all previous proceedings of the Court of the said Commissioner shall be dealt with as if the same had been had in the Chief Court.

Provisions as to proceedings pending in Judicial Commissioner's Court.

**XLVI.** If the Chief Court shall consist of two Judges only, and if in any case heard by such Judges sitting together, there shall be a difference of opinion between them, the following course shall be pursued, that is to say:—

Procedure in case of difference of opinion between Judges when Court consists of only two.

(1st.)—If the case be heard in appeal, and the difference of opinion shall be on any question of fact in the finding of the Lower Court, the finding shall be upheld.

1st.—On appeal on a question of fact.

(2nd.)—If the difference of opinion shall be on a point of law or of usage having the force of law, the ruling of the Lower Court shall in such case also be upheld, unless one of the Judges shall be of opinion that the point is one which ought to be referred to the High Court of Judicature at Calcutta, in which case the Judges shall state the point as to which they differ, and forward such statement, with their own opinions respectively, to such High Court. The Chief 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.

2nd.—On appeal on a question of law.

(3rd.)—If the case be heard by the Judges in the exercise of the original jurisdiction of the Chief Court, and the difference of opinion shall be on a point of law or usage having the

3rd.—In exercise of original jurisdiction on a question of law.



force of law, the Judges shall state the point on which they differ, and proceed as last hereinbefore provided. The same rule shall be observed when a difference of opinion may arise between two Judges of the Court upon a point of law, reserved under the thirty-fifth Section.

(4th.)—If the case be heard by the Judges in the exercise of the original jurisdiction of the Chief Court, and the difference of opinion be on a question of fact, the opinion of the Senior Judge shall prevail, and he shall pronounce his decision as the decision of the Court.

XLVII. Cases referred under this Act for the opinion of the High Court of Judicature at Calcutta, shall be heard by not less than three Judges of that Court, and shall be determined according to the opinion of the majority of such Judges.

XLVIII. The parties to such cases may appear, plead and act in the said High Court in person, or by an Advocate or Vakeel of such High Court; and the High Court, when it has heard and considered the case, shall transmit a copy of its opinion under the seal of the Court and the signature of the proper Officer of the Court, to the Judges of the Chief Court. Parties may appear in person, or by Advocate or Vakeel. Costs, if any, consequent on the reference of a case for the opinion of the High Court, under the forty-sixth Section, shall be costs in the suit.

XLIX. The Chief Court shall keep such registers, books and accounts, and submit to the Lieutenant-Governor such statements of the work done in the Court as may be required by him. The Chief Court shall also comply with such requisitions as may be made by the Governor-General of India in Council, or by the Lieutenant-Governor for certified copies of or extracts from the records of the Court.

Transmission of judgment of High Court and proceeding thereupon.

Costs of reference to High Court.

Registers, books, accounts, and statements to be kept and furnished by Chief Court.

Copies of records to be furnished.

L. Save as is in this Act otherwise expressly declared, any function which is hereby directed to be performed by the Chief Court, may be performed by any Judge or Judges there-  
 of appointed in that behalf by any rule made under the forty-fourth Section.

Chief Court's functions exercisable by single Judge.

LI. Whenever the Lieutenant-Governor of the Punjab shall, under the authority vested in him by Section forty-seven of the Pleaders, Mookhtars, and Revenue Agents' Act, 1865, extend the provisions of the said Act to the Territories under his Government, nothing in the said Act shall affect the provisions of Sections ten, eleven and twelve of this Act.

Sections 10, 11 and 12 not to be affected on extension to Punjab of Act XX of 1865.

Short title.

LII. This Act may be cited as "The Punjab Chief Court Act, 1865."

LIII. This Act shall come into operation on such day as the Governor-General of India in Council shall fix, by a notification published in the Gazette of India.

Commencement of Act.

## WARRANTS OF ATTORNEY AND COGNOVITS.

### ACT NO. XXIV. OF 1865.

[Received the assent of the G. G. on the 14th July 1865.]

Recites the expediency of giving effect to warrants of attorney and cognovits filed and executed since July 1, 1862, and of making valid judgments signed under such, and executions thereon up to passing this Act.

1. Authorizes judgment being signed under such warrants and cognovits subject to Rules, &c., respecting such securities as were in force in Supreme Court.

2. Directs that judgments on such warrants and cognovits shall be deemed decrees of the High Court and be executed accordingly.

3. Makes valid all judgments signed on such warrants and cognovits in the High Court and all executions sued out and other proceedings thereon, and prohibits proceedings against any person for anything done under such judgment or execution, which might have been done then if Supreme Court were continued.

4. Reserves to High Court same power as Supreme Court would have had to set aside or annul such warrant or cognovit, &c.
5. Makes void warrants and cognovits filed after passing of this Act.
6. Allows extension of Act to Bombay by the Local Government.

WHEREAS it is expedient to give effect to Warrants of Attorney to confess judgment in suits in the High Court of Judicature at Fort William in Bengal which were executed on the first day of July 1862, being the date of the establishment of the said Court, or on the date of the passing of this Act, or on any intermediate day, and to Cognovits executed or given on any of the days above mentioned by any defendant in any suit pending in the same Court: and whereas it is also expedient to render valid judgments which have been signed on such Warrants of Attorney and Cognovits respectively, and executions and subsequent proceedings which have been sued out and taken thereon; It is enacted as follows:—

I. Judgment may be signed in the said High Court upon every Warrant of Attorney and *Cognovit actionem* executed or given in or relating to proceedings in the same Court on the said first day of July 1862, or on the date of the passing of this Act, or on any intermediate day, in the same manner as judgments were signed in the late Supreme Court of Judicature at Fort William in Bengal upon Warrants of Attorney and Cognovits executed or given in or relating to proceedings in such Court; and all such Warrants of Attorney and Cognovits shall be subject, as nearly as circumstances permit, to all rules of Court and provisions of Acts of Parliament which were in force at the time when the said High Court was established, and to which Warrants of Attorney and Cognovits given in or relating to proceedings in the said Supreme Court were then subject.

II. A judgment entered up or signed on any Warrant of Attorney or Cognovit to which this Act extends shall be deemed a decree of the said High Court, and may be executed and enforced accordingly.

Judgments on such Warrants or Cognovits to be deemed decrees of the High Court.

III. Any judgment which has been signed on any such Warrant or Cognovit in the said High Court shall be deemed to be and always to have been as valid and effectual as if the same had been signed in the said Supreme Court upon a Warrant of Attorney or Cognovit given in that Court; and every writ of execution which has been sued out thereon, and every execution of any such writ, and all proceedings taken thereon, shall for all purposes be deemed and taken to be and always to have been as valid and effectual as if the same had been sued out of the said Supreme Court upon a judgment signed in the same Court upon a Warrant of Attorney or Cognovit given in or relating to proceedings in that Court; and no suit or other proceeding shall be commenced, prosecuted or carried on against any person for any thing done under or in pursuance of such judgment or execution which could not have been maintained if such judgment had been entered up in the said Supreme Court upon a Warrant of Attorney or Cognovit executed or given in or relating to proceedings in that Court, and the execution had been issued on such judgment.

IV. The said High Court shall have the same powers to set aside or annul any such Warrant or Cognovit and any judgment signed thereon and any execution issued upon such judgment, as the said Supreme Court exercised with respect to Warrants of Attorney or Cognovits executed or given in or relating to proceedings in that Court and to judgments entered up thereon and to executions upon such judgments.

V. Every Warrant of Attorney and Cognovit executed or given after the passing of this Act, in or relating to proceedings in the said High Court, or in any other High Court of Judicature in British India, and every judgment signed thereon, and all executions issued upon such judgments, shall be deemed null and void.

Judgments on such Warrants or Cognovits to be as valid as if signed in the late Supreme Court.

Power to High Court to set aside or annul Warrants and Cognovits.

Warrants and Cognovits executed and given after the passing of this Act to be void.

VI. This Act may be extended, *mutatis mutandis*, to the High Court of Judicature at Bombay, by an order of the Governor in Council to be published in the Local Government Gazette.

This Act may be extended to the High Court at Bombay.

### CUSTOMS DUTIES ON IMPORTS AND EXPORTS.

#### ACT No. XXV. OF 1865.

[Received the assent of the G. G. on the 14th July 1865.]

1. Repeals Act 17, 1865.

2. In lieu of Customs Duties under Acts specified and Act 17, 1865, substitutes the duties specified in Schedules A and B. But saves from operation of this Act duties on Salt and Opium and Free Ports and the Consolidated Customs Act.

3. Gives retrospective effect to this Act from the 29th March as respects duty on export of saltpetre.

4. Entitles this Act, the Indian Customs Duties Act of 1865. Schedule A. Import Duties, Schedule B. Export Duties.

WHEREAS it is expedient to amend the Law relating to Customs duties; It is enacted as follows:—

Preamble.

Act XVII of 1865 repealed.

I. Act XVII of 1865 is repealed.

II. In lieu of the Customs duties authorized to be charged in Act VII of 1859 (*to alter the duties of Customs on goods imported or exported by Sea*), Act XXIII of 1859 (*to alter the rates of duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively*), Act X of 1860 (*to amend Act VII of 1859 to alter the duties of Customs on goods imported or exported by Sea*), Act XI of 1862 (*to amend Act X of 1860, to amend Act VII of 1859*), Act XXIII of 1862 (*to amend Act XI of 1862*), and Act XXIII of 1864 (*to amend the law relating to the Customs duties on goods imported by Sea*), there shall be levied and col-

Customs duties to be levied as prescribed in the Schedules annexed to this Act.

lected the duties specified in the two Schedules A and B annexed to this Act. Provided always that nothing herein contained shall be deemed to alter the existing duties upon Salt and Opium, or to authorize the levy of duties in any free Port, or to affect the provisions of Act VI of 1848 (*for equalizing the duties on goods imported and exported on Foreign and British bottoms, and for abolishing duties on goods carried from Port to Port in the Territories subject to the Government of the East India Company*), or to affect the provisions of the Consolidated Customs' Act.

III. So far as regards the Customs duty on the export of Saltpetre, authorized to be levied by Schedule B hereunto annexed, this Act shall take effect as if it had been passed and had received the assent of the Governor-General on the 9th day of March 1865; and so far as regards the alterations made by this Act in Schedules A and B of the Customs duties which were authorized to be levied by Act XVII of 1865, this Act shall take effect as if it had been passed and had received the assent of the Governor-General on the first day of April 1865, and all duties which may have been levied from and after that date, other than those authorized to be levied according to Schedule B annexed to this Act, shall be refunded. But save as aforesaid, this Act shall take effect from the fourteenth day of July 1865.

Short title.

IV. This Act shall be cited as "The Indian Customs Duties' Act of 1865."

#### SCHEDULE A.

Rates of Duty to be charged on the following goods imported by Sea into any Port in British India, not being a Free Port.

1. Bullion and Coin	...	...	...	Free.
2. Precious Stones and Pearls	...	...	...	„
3. Grain and Pulse...	...	...	...	„
4. Horses and other living Animals	...	...	...	„
5. Ice	..	...	...	„
6. Coal, Coke, Bricks, Chalk, and Stones	...	...	...	„
7. Cotton Wool	...	...	...	„
8. Wool	...	...	...	„

9.	Flax ... ..	Free.
10.	Hemp ... ..	„
11.	Jute ... ..	„
12.	Hides and Skins, raw	„
13.	Books ... ..	„
14.	Paper ... ..	„
15.	Maps, Prints, Music, and Works of Art	„
16.	Seeds when imported by any Public Society for gratuitous distribution	„
17.	Agricultural Implements	„
18.	Firewood	„
19.	Machinery used exclusively for purposes of Agriculture, Navigation, Mining or Manu- facture, or for Railway purposes, and mate- rials forming necessary component parts of such machinery	„

And the Officer in charge of the Custom House, subject to the orders of the Local Government acting under the general instructions of the Government of India, shall decide what articles come within the definition of such machinery, or materials forming component parts thereof, and such decision shall be final in law.

20.	Military and other Regulation Uniforms and Accoutrements when imported for private use by persons in the Public Service	Free.
21.	Guano and manures of all kinds	„
22.	Bottles...	„
23.	Wines and Liqueurs	One Rupee the imperial gallon.
24.	Porter, Ale, Beer, Cider, and other similar fermented liquors	One Anna the imperial gallon.
25.	Spirits	Three Rupees the imperial gallon, and the duty to be rateably increased as the strength exceeds London Proof.

Provided that ten per cent. *ad valorem* shall be charged on all spirits used exclusively in Arts and Manufactures, or in Chemistry, subject to such Rules as the Local Governments shall from time to time prescribe, for ascertaining that such spirits are unfit for use as a beverage, and incapable of being converted to that purpose. And the Officer in charge of the Custom House, subject to the general instructions of the Local Government, shall decide what spirits fall within the proviso, and his decision thereon shall be final in law.

- |     |   |   |  |
|-----|---|---|--|
| 26. | Iron (which shall not<br>be taken to in-<br>clude iron-mon-<br>gery, cutlery, or<br>hardware) ... | } | One per cent. <i>ad valorem</i> .              |
| 27. | Hops ... ..   |   | One per cent. <i>ad valorem</i> .              |
| 28. | Tobacco, whether<br>manufactured or<br>not manufactured   | } | Ten per cent. <i>ad valorem</i> .              |
| 29. | Piece Goods ...   |   | Five per cent. <i>ad valorem</i> .             |
| 30. | Twist ... ..  | } | Three and a half per cent. <i>ad valorem</i> . |
| 31. | All other articles<br>not included in<br>the above enu-<br>meration ...                           | } | Seven and a half per cent. <i>ad valorem</i> . |

### SCHEDULE B.

Rates of Duty to be charged upon goods exported by Sea to any Foreign Port, as defined in the Consolidated Customs' Act, from any Port in British India.

- |    |                                       |     |     |       |
|----|---------------------------------------|-----|-----|-------|
| 1. | Bullion and Coin...                   | ... | ... | Free. |
| 2. | Precious Stones and Pearls ...        | ... | ... | „     |
| 3. | Horses and other living Animals       | ... | ... | „     |
| 4. | Rum ... ..                            | ... | ... | „     |
| 5. | Spirits ... ..                        | ... | ... | „     |
| 6. | Tobacco, and all preparations thereof | ... | ... | „     |



7.	Cotton Wool	...	...	...	Free.
8.	Flax	...	...	...	"
9.	Hemp	...	...	...	"
10.	Books	...	...	...	"
11.	Maps, Prints, and Works of Art	...	...	...	"
12.	Teak Timber	...	...	...	"
13.	Coal	...	...	...	"
14.	Iron	...	...	...	"
15.	Jute	...	...	...	"
16.	Coffee	...	...	...	"
17.	Tea	...	...	...	"
18.	Sugar	...	...	...	"
19.	Wool	...	...	...	"
20.	Hides and Skins, raw	...	...	...	"
21.	Raw Silk and Silk Chussum...	...	...	...	"
22.	Grain and Pulse of all sorts..	Two Annas the Indian maund ..			
23.	Saltpetre	One Rupee the Indian maund...		} Of forty seers of eighty tolas to the seer.	
24.	Indigo ...	Three Rupees the Indian maund...			
25.	Lac Dye and Shell Lac..	Four per cent			<i>ad valorem.</i>
26.	All country articles ) not enumerated or ) named above .....				Three per cent. <i>ad valorem.</i>

## ARTICLES OF WAR FOR NATIVE ARMY.

## ACT No. XXVI. OF 1865.

[Received the assent of the G. G. on the 3rd August 1865.]

Recites expediency of amending Act 29, 1861, Art. 83.

1. Repeals the said Article; substitutes new Article for it respecting Minor Punishments.
2. Act to be read as part of Act 29, 1861.

WHEREAS it is expedient to amend the 83rd Article of War enacted in the said Act XXIX of 1861;  
 Preamble. It is enacted as follows:—

I. The Article of War numbered 83 in the said Act XXIX of 1861, is hereby repealed, and in lieu thereof, the following Article of War shall be read and taken as Article 83 of the said Act XXIX of 1861:—  
 Repeal of Article 83.

#### ARTICLE 83.

The Commander-in-Chief in India shall, under the authority of the Governor-General in Council, prescribe the minor punishments to which Non-Commissioned Officers and Soldiers shall, for light offences, be liable, without the intervention of a Court Martial; and shall specify the Officer or Officers by whom such minor punishment and the extent thereof may be awarded. But no such minor punishment shall be awarded by a Court Martial.

Construction. II. This Act shall be read and taken as part of the said Act XXIX of 1861.

### PUNJAB CHIEF COURT OF JUDICATURE.

#### ACT No. XXVII. OF 1865.

[Received the assent of the G. G. on the 17th August 1865.]

Recites expediency of making provision for trial of Appeals heard before Financial Commissioner prior to passing of Act 23, 1865.

1—2. Authorizes the Government of the Punjab to invest the Financial Commissioner with the power of Judicial Commissioner for the purpose of trying generally the appeals described and all such appeals whether filed before or after May 1st, 1865.

WHEREAS it is necessary, pending the establishment of the Chief Court in the Punjab under Act XXIII of 1865, to make special provision for the decision of such appeals as previously to the passing  
 Preamble.

of Act XIX of 1865 were heard by the Financial Commissioner ;  
It is enacted:—

I. Until such time as Act XXIII of 1865 shall come into operation, the Government of the Punjab may invest the Financial Commissioner of the Punjab with the powers of Judicial Commissioner for trial of appeals. Punjab Government may invest Financial Commissioner with powers of Judicial Commissioner for trial of appeals.

generally appeals in respect of suits regarding land, or the rent, revenue, or produce of land, anything in Act XIX of 1865 to the contrary notwithstanding.

II. The provisions of this Act shall apply to all such appeals as aforesaid, whether filed before or after the first of May 1865.

Operation of Act.

### BOMBAY INSOLVENT TRADERS' ACT.

#### ACT XXVIII OF 1865.

[Received the assent of the G. G. on the 27th September 1865.]

Recites expediency of providing for the more speedy liquidation of Insolvent Traders in Bombay.

1. Interprets the words Trader, Court, words of Number and Gender.
- 2—3. Estate of Trader being or declaring himself to be unable to pay his debts, may be wound up by Trustees under order of Court; and (2—3) as to what Traders shall be deemed unable to pay their debts.
- 4—5. Empowers any meeting of Creditors of a Trader who is or has declared himself unable to pay his debts, to resolve that his Estate ought to be wound up under this Act, and to nominate Trustees for the purpose; and (5) gives regulations for such meeting, and directs what advertisements shall be given.
6. Directs mode of applying to Court for an Order, and the conditions on which it shall be made, subject to right of the Trader to apply to set it aside.
- 7—8. Upon Order being made all the Estate, &c., of Trader to vest in the Trustees appointed by the Court, and vesting effect to relate back to time of filing the Resolutions in Court, &c.; and (8) from date of vesting order, stays all proceedings and executions against Trader, except process to prevent departure or removal of effects out of the jurisdiction.
- 9—10. Define the powers of the Trustees.

11—14. Directs the Trustees to report certain specified misconduct of the Insolvent to the Court, which is empowered upon proof of the alleged offence to sentence the offender to rigorous or simple imprisonment; and (12) directs the Trustees, on discovery of Trader having contracted debts fraudulently, or by means of breach of trust, or false pretences, or without having any reasonable expectation of paying them, &c., to report the same to the Court, which, on proof of the alleged offence, may sentence the offender to not exceeding two years' imprisonment on the Debtors' side of the Gaol; and (13) makes void executions under decrees voluntarily suffered with intent to give a preference over other creditors, if executed within three months of the filing of the vesting order, &c.; and (14) makes void conveyances, &c., of property by Insolvent Trader within two months before the vesting order.

15. Empowers the Court to entertain any application, either of Insolvent or Creditors, respecting the disclosure, &c., of the Estate, or anything relating thereto.

16. Empowers the Court to remove Trustees, appoint others, and declare whether acts may be done by all or any of them only.

17—18. Empowers the Court on Petition of a certain proportion of the Creditors of any Insolvent who has filed his Petition, to order that his Estate be wound up under this Act; and (18) empowers Trustees under Deed of Assignment to apply to the Court for liberty to wind up under this Act.

19. Trustees under this Act may make an allowance to the Trader for maintenance with sanction of the Court.

20. Entitles the Trustees to such remuneration as the Court shall direct.

21—24. Directs the Trustees to file half-yearly accounts; and when Estate is wound up, an account showing the manner of liquidation, &c.; the filing of which account (22) shall be advertised and how; and (23) after the filing of such account, and upon notice, &c., the Court may order the discharge of the Insolvent; and (24) the effect of such order shall be to discharge the Trader and all subsequent acquired property from all debts, &c., included in the account of the Trustees.

25. Directs that any applications to the Court under this Act shall be made to a Judge in Chambers, and defines his powers.

26. Confines the operation of the Act to Estates, the admitted liabilities of which are not less than five lakhs of Rupees.

27. Act to come into operation on 1st October 1865, and remain in force till the 30th September 1867, but to remain in force after for winding up Estates already vested in Trustees.

WHEREAS it is expedient to provide for the more speedy liquidation of Insolvent Traders' Estates in Bombay; It is enacted as follows :—

Preamble.

I. The following words and expressions in this Act shall have the meanings hereby assigned to them :—

Definition of terms.

The word “Trader” shall mean any person or partnership, not being a joint stock Company, carrying on trade or mercantile operations within the local limits of the ordinary original Civil jurisdiction of the High Court of Judicature at Bombay.

“Trader.”

The expression “the Court” shall mean the High Court of Judicature at Bombay in its ordinary original Civil jurisdiction.

“The Court.”

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Number.

II. Whenever any trader shall be, or shall declare himself, unable to pay his debts, it shall be lawful to wind up the estate of such trader by trustees under the control of the Court.

When traders' estates may be wound up under this Act.

Trader when to be deemed unable to pay his debts.

III. A trader shall be deemed to be unable to pay his debts—

1.—Whenever a creditor, to whom the trader is indebted in a sum exceeding five thousand Rupees then due, has duly served on the trader a demand in writing requiring the trader to pay the sum so due, and the trader has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor.

2.—Whenever satisfaction of a judgment, decree, or order of any Court in favor of any creditor in any suit or other legal proceeding cannot be obtained.

3.—Whenever the trader has committed an act of insolvency within the meaning of an Act passed in the eleventh and twelfth year of the reign of Her Majesty Queen Victoria, intituled an Act to consolidate and amend the Laws relating to Insolvent Debtors in India.

IV. At any meeting of creditors held after a trader is, or has declared himself, unable to pay his debts, and whether such meeting shall have been convened at the instance of the trader or of one or more of his creditors, provided that six days' notice of such meeting shall have been given by advertisement in two of the daily English newspapers and in two of the vernacular newspapers published in Bombay, it shall be lawful for a majority in number and unsecured value of the creditors present or represented at such meeting, to resolve that the estate of such trader ought to be wound up under the management of trustees, and that an application shall be made to the Court for the purpose; and upon such resolution being adopted, the meeting shall proceed to nominate three or more trustees for the liquidation of such estate, and to fix the amount or rate of salary or remuneration to be paid to such trustees, and the amount of security (if any) to be given by such trustees.

V. Every such meeting shall be presided over by a Chairman elected by the meeting, and such Chairman shall determine the right of persons present to vote upon the matters aforesaid, and shall report the resolutions adopted by such meeting to the Court by filing a copy thereof under his own signature in the office of the Prothonotary of the Court within two days from the date of such resolutions being passed, and shall also cause such resolutions to be advertized without delay in the Government Gazette and in two of the daily English newspapers and two of the vernacular newspapers published in Bombay: and all necessary expenses incurred by or by the authority of the Chairman in carrying out the resolutions of the meeting shall be payable by the trustees out of the estate.

VI. Upon such resolutions being so filed in Court as aforesaid the Chairman or any creditor nominated in that behalf by the meeting may apply to the Court for an order to wind up the estate on the terms of such resolutions. Every such application shall be in the form of a petition and shall be verified by the petitioner in

like manner as plaints are required to be verified by Act VIII

Power for Court to confirm or modify resolutions and give directions.

of 1859; and on hearing such petition, if the Court shall be satisfied that the resolutions were duly carried, and that their

terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall confirm or modify the same as it shall deem fit, and shall make order accordingly, and in such order shall give such directions as to the management of the estate and the advertisement of such order as it shall deem expedient; Provided always that the trader or any creditor may, within six days after the making of such order, apply to the Court to set aside the same either wholly or in part, giving to the petitioner reasonable notice of such application.

VII. Upon the making of such order, all the movcable and

Order of Court to vest trader's estate on trustees.

immoveable estate and effects of such trader and all debts due to him and all the future estate, right, title, interest and

trust of such trader in or to any moveable or immoveable property which such trader may purchase or which may revert, descend, be devised or bequeathed or come to him, and all debts growing due to such trader in respect of transactions included in the liquidation, before the Court shall have made its final order in respect to the liquidation of his estate, shall vest in the trustees appointed by the Court, and all books, papers, deeds, documents and writings in any way relating to such trader's estates and effects in his possession or under his custody or control, shall be forthwith deposited with such trustees; and such order shall be entered of record in the said Court; and such notice thereof shall be published as the Court shall direct; and such order when so made shall by virtue of this Act relate back to and take effect from the filing of the said resolutions in Court as aforesaid, and shall instantly and without any conveyance or assignment vest all the moveable and immoveable estate, effects and debts as aforesaid of such trader in the said trustees.

VIII. After the date of such order all suits and legal proceedings of whatever kind in respect of

Protection to trader after vesting order.

such trader's civil liabilities shall be stay-

ed, and no execution, attachment or other process against such trader's property in respect of any debt, and no process against his person in respect of any debt, other than such process by writ or warrant as may be had against a debtor about to depart out of the jurisdiction of the Court, shall be available to any creditor or claimant without leave of the Court.

IX. The trustees shall have power by virtue of this Act in their own name to do the following things:—

Power of trustees.

To bring or defend any action suit or prosecution or other legal proceeding, Civil or Criminal, on behalf of such trader; and on like behalf to claim, prove and draw dividends under any bankruptcy, insolvency or liquidation by trustees under this Act.

To carry on the business of such trader so far as may be necessary for the beneficial liquidation of the same.

To sell the property, moveable or immoveable, effects and things in action of such trader by public auction or private contract, with power if they think fit to transfer the whole thereof to any person or Company, or to sell the same in parcels.

To execute on behalf of such trader all deeds, receipts and other documents they may think necessary.

To refer disputes to arbitration and compromise any debts or claims.

To draw, accept, make and endorse any Hoondée, Bill of Exchange or Promissory Note on behalf of such trader, and also to raise upon the security of the assets of such trader's estate from time to time any sum or sums of money, whenever the same shall be necessary for the purposes of this Act.

To do and execute all such other things as may be necessary for winding up the affairs and distributing the assets of such trader.

To apply to the Court from time to time as occasion may require for its assistance in carrying out the powers conferred upon the trustees by this Act; Provided always that such



trader or any creditor shall be at liberty to apply to the Court to set aside or restrain any act done or about to be done by the said trustees under this Act, and the Court shall make such order upon such application with respect to costs and otherwise as it shall deem fit; and provided also that nothing herein contained shall discharge the said trustees or any of them from liability to account to the said Court for acts done by them in the liquidation of the estate of the trader under this Act.

X. The trustees shall have power to summon before them and to examine upon oath or otherwise such trader and any of his assistants, clerks or servants whom the trustees may deem capable of giving any information material to the full disclosure of the trader's transactions, books and affairs, or to the winding up of the same; and the provisions of the Acts in force for the time being for procuring the attendance of witnesses, and for the examination and punishment of witnesses in suits before Civil Courts, shall be of equal force and effect in respect of any person summoned to appear as a witness under the provisions of this Act.

XI. If in the course of their investigation it shall appear to the trustees that such trader has fraudulently, with the intent to conceal the state of his affairs or to defeat the objects of this Act, destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any such book, paper or writing, or that such trader has fraudulently, with intent of diminishing the sum to be divided among his creditors or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said trader or made away with, charged, mortgaged or concealed any part of his property of what kind soever, the trustees shall forthwith report the same to the Court

which shall enquire into the same in like manner and with like powers as a Commissioner of the Court for the Relief of Insolvent Debtors in Bombay ; and upon such offence being proved against such trader to the satisfaction of the Court, it shall be lawful for the Court to adjudge that the offender shall be punished with rigorous or simple imprisonment, as the Court shall direct, for a term which may extend to two years, and by warrant under the seal of the Court to order the offender to be arrested and committed to prison and there to be detained accordingly.

XII. If in the course of their investigation, it shall appear to the trustees that such trader has contracted any of his debts fraudulently or by means of breach of trust or by means of false pretences or without having any reasonable or probable expectation at the time when contracted of paying the same, or shall have fraudulently or by means of false pretences obtained the forbearance of any of his debts by any of his creditors, or if it shall appear that such trader's whole debts so greatly exceeded his means of providing for the payment thereof during the time when the same were in the course of being contracted (reference being had to his actual and expected property) as to show gross misconduct in contracting the same, the trustees shall forthwith report the same to the Court, which shall thereupon enquire into the same in like manner and with like powers as a Commissioner of the Court for the Relief of Insolvent Debtors in Bombay ; and upon such offence being proved against such trader to the satisfaction of the Court, it shall be lawful for the Court to adjudge that the offender be committed to and detained in the gaol at Bombay, on the debtors' side thereof, for such term not exceeding two years as the Court shall direct.

XIII. If upon any decree voluntarily suffered by such trader, being insolvent to any person with intent to give such person a preference over other creditors of such trader any

Executions upon certain decrees within three months of first order to be void.

attachment or execution is issued against such trader by virtue whereof the estate and the effects of such trader or any of them are attached or taken in execution at any time within three months next before the filing of such order as herein mentioned, such attachment or execution shall be void in favor of the trustees appointed by virtue of this Act as against the attaching or execution creditor, whether the same has been completely executed or not, and it shall be lawful for such trustees to recover back from such creditor the estate or effects of such trader so attached or taken in execution or the proceeds thereof as the case may be; Provided always that such creditor shall, if the attachment or execution would have been valid but for this provision, be entitled to retain or levy, as the case may be, his costs of suit and of such attachment or execution.

XIV. If any trader whose estate shall be vested in trustees under the provisions of this Act shall, when in insolvent circumstances, and within two months before the filing of such order as herein first mentioned, voluntarily convey, assign, transfer, charge or make over any property moveable, or immoveable or any security for money, bond, bill, note, money, goods or effects whatsoever to any person or upon any trust, every such conveyance, assignment, transfer, charge or making over shall be deemed and is hereby declared to be fraudulent and void as against such trustees.

XV. The Court shall have jurisdiction at any time during the liquidation of any trader's estate under this Act, to entertain any application of the said trader or of any person claiming to be a creditor, respecting the disclosure, distribution, inspection, conduct, management or liquidation of such trader's estate or affairs, or any act or thing relating thereto, or generally for the decision of any dispute or question that may arise between the trustees and such trader, or any creditor, debtor or claimant.

XVI. The Court shall have power to remove any trustees appointed under this Act, and to appoint others in their stead, and to fill up any vacancy occasioned by the death, insolvency, resignation or departure from India of any trustee, or by any other sufficient cause; and the Court shall upon application to it in that behalf declare whether any act hereby required or authorized to be done by the trustees may be done by all or one or more of such trustees.

XVII. It shall be lawful for the Court for the Relief of Insolvent Debtors at Bombay, upon application by or on behalf of a majority in number and unsecured value of the creditors of any insolvent debtor who has filed his petition in that Court, to order that the estate of such insolvent shall be wound up by trustees under the provisions of this Act, upon such terms as to costs and remuneration to the Official Assignee, and with such directions as shall appear to be necessary and just.

XVIII. It shall be lawful in any case in which the estate of any trader has been vested in trustees under a deed of assignment before the passing of this Act, for such trustees to apply to the Court for liberty to wind up such estate under the provisions of this Act.

XIX. In any case in which the estate of a trader shall be vested in trustees under the provisions of this Act, it shall be lawful for the trustees, with the sanction of the Court, to make to such trader out of the funds in their hands a reasonable monthly allowance for maintenance.

XX. There shall be paid to the trustees such salary or remuneration by way of percentage or otherwise as the Court shall direct; and all costs, charges and expenses properly incurred in winding up the estate, including the remuneration of the trustees and the

maintenance of the trader, shall be payable out of the assets of the trader in priority to all other claims.

XXI. During the liquidation of the estate the trustees shall file half-yearly accounts of the progress of such liquidation in the office of the Prothonotary of the Court; and as soon as the affairs of the trader are fully liquidated and the estate distributed, the trustees shall make up an account showing the manner in which such liquidation has been effected and the property of the trader disposed of, and such account, with the vouchers thereof, shall be filed in Court. All accounts so filed shall be open at all reasonable times to the inspection of creditors, and copies thereof shall be granted on payment of such fees as may from time to time be fixed by the Court.

XXII. The trustees shall give notice of the filing of such final account with its vouchers by advertisement of even date in the Government Gazette and in two of the daily English newspapers and in two of the vernacular newspapers published in Bombay; and if no order to the contrary shall be made by the Court within three months after the date of the publication of such advertisement, the said estate shall be deemed to have been fully liquidated and wound up, and the trustees shall thereupon be deemed to be fully released and discharged from all liability in respect of the said estate and the liquidation thereof.

XXIII. After the filing of such final account as aforesaid and upon the said trustees certifying to the Court under their hands that the said trader has assigned, conveyed or made over to them all his property, effects and securities of every nature and kind whatsoever, and all books of account, accounts, vouchers, papers and documents relating to his estate, and also that he has given all reasonable assistance to the trustees in and towards realizing and winding up his estate, it shall be lawful for the Court upon the application of such trader, and upon such notice as it shall direct, to grant to such trader an order of

discharge; Provided always that if such certificate as aforesaid shall have been refused to any trader by the trustees, such trader may nevertheless apply to the Court for such order of discharge and the Court shall have power, upon such notice to the trustees as it shall direct, to grant such trader an order of discharge if it shall think fit.

**XXIV.** Such order of discharge shall operate to discharge the trader and all property and effects acquired by him subsequent to the filing of the order herein first mentioned, from all debts, claims or demands in respect of the transactions included in the account filed by the trustees, and no suit shall thereafter be maintainable against the said trader, nor shall such after-acquired property and effects be liable to be attached or taken in execution, in or under the order of any Court in British India, in respect of such transactions.

**XXV.** Any application directed by this Act to be made to the Court shall be made to a Judge in Chambers, who shall have power to make any order necessary to be made under this Act, or to refer such application to a full Court, and such Court or Judge is hereby empowered to make any order in respect of the premises, which could be made by a Commissioner of the Court for the Relief of Insolvent Debtors under 11 and 12 Vic., cap. 21.

**XXVI.** The operation of this Act shall be limited to estates in which the admitted liabilities are not less than five lakhs of Rupees.

**XXVII.** This Act shall come into operation on the first day of October 1865 and shall remain in force until the thirtieth day of September 1867. Provided that as to such estates (if any) as shall, on or before such day, have been brought under the operation of this Act, and of which the winding up under its provisions shall not have been completed, this Act shall remain in force until such estates shall have been wound up as aforesaid.

**PLEADERS, MOOKHTARS, AND REVENUE AGENTS.**

**ACT XXIX OF 1865.**

[Received the assent of the G. G. on the 22nd. December 1865.]

Recites expediency of amending Act 20. 1865.

1. Gives 6 months' further time for admission and enrolment to Pleaders, &c., practising when Act comes into operation; and (2) saves such from operation of enactments respecting stamps; and (3) makes same provision as to Revenue Agents.

4. Authorizes High Court to admit admitted Pleaders to practise in Small Cause Courts.

5. Interpretation Clause; and (6) directs that the Act shall be read as part of Act 20, 1865.

WHEREAS it is expedient to amend the Pleaders, Mookhtars and Revenue Agents' Act, 1865 (Act No. XX of 1865); It is enacted as follows :—

Preamble.

low's :—

I. Notwithstanding anything contained in the Pleaders,

Persons qualified as Pleaders or Mookhtars when Act No. XX of 1865 shall come into operation may continue to practise for six months as if that Act had not been passed.

Mookhtars and Revenue Agents' Act, 1865, any person who at the time when such Act shall come into operation shall be duly qualified to practise as a Pleader or Mookhtar in any Court in any part of the territories in which the said Act shall

take effect, shall and lawfully may continue to practise as a Pleader or Mookhtar, as the case may be, in such Court for the period of six calendar months from the time when the said Act shall come into operation in that part of India, without being admitted or enrolled, or having previously obtained a stamped certificate in pursuance of the said Act, in the same manner as if such Act had not been passed.

II. All fees which are now by law payable upon proceedings in any Court by any party in respect

Fees now payable by any person in respect of his adversary's Pleader to be payable during the six months as if Act XX of 1865 had not been passed.

of the fees of his adversary's Pleader shall continue to be payable, and may be allowed during the said period of six calendar months as if the said Act had not been passed.

III. Notwithstanding anything contained in the said Act, any person who all the time when such Act shall come into operation shall practise as an Agent in any proceeding before the Board of Revenue or in any Office subordinate to such Board, in any part of the territories in which the said Act shall take effect, shall and lawfully may continue to practise as an Agent before such Board or in such Office, as the case may be, for the period of ~~six~~ calendar months from the time when the said Act shall come into operation in that part of India without being admitted or enrolled, or having previously obtained a stamped certificate in pursuance of the said Act, in the same manner as if such Act had not been passed

IV. Whenever the High Court shall cause a certificate, whether original or renewed, authorizing the holder to practise as a Pleader in the Courts mentioned in Clause (c) of Section 10 of the said Act, to be issued to a person entitled, under the proviso in Section 5 of the same Act, to be admitted and enrolled as a Pleader in the High Court without passing any examination, the Court may in such certificate authorize the holder to practise as a Pleader in Small Cause Courts in addition to the Courts mentioned in the said Clause (c), and he shall thereupon be entitled to practise as last aforesaid, subject to the conditions contained in the said Act as to the duration of and stamp on a certificate authorizing the holder to practise as a Pleader in the Courts mentioned in the said Clause (c).

V. In the construction of this Act and of the said Act No. XX of 1865, the expression 'Office subordinate to such Board,' and in the construction of the latter Act, the expression 'Revenue Office,' shall be taken to apply to Collectors and Deputy Collectors

Persons practising as Revenue Agents when Act No XX of 1865 shall come into operation, may continue to practise for six months as if that Act had not been passed

High Court may permit person entitled, without examination, to a certificate authorizing him to practise as a Pleader in the Courts mentioned in Act No. XX of 1865, Section 10, Clause (c), to practise in Small Cause Courts.

Interpretation Clause.



trying suits under Act No. X of 1859 (*to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal*).

This Act to be taken as part of Act No XX of 1865.

VI. This Act shall be read with and taken as part of "The Pleaders, Mookhtars and Revenue Agents' Act, 1865."

### MADRAS IRRIGATION AND CANAL COMPANY.

#### ACT XXX OF 1865.

[Received the assent of the G. G. on the 22nd December 1865.]

1. Entitles the Madras Irrigation and Canal Company to charge at not exceeding 1 Re for 400 cubic feet of water
- 2 Act to come into force 1st January 1866

WHEREAS, by an Indenture made on the third day of June one thousand eight hundred and sixty-three, between the Secretary of State in Council of the one part, and the Madras Irrigation and Canal Company of the other part, it was amongst other things provided that the Company should be authorized and empowered to charge such rates for the supply of water generally, except the supply for the purposes of Irrigation, as should not exceed the rates which should "be defined by an Act of Parliament of the Indian Legislature," and should not in any case charge any higher rates whatsoever: And whereas it is expedient to fix the rates which the said Company may charge for the said purpose; It is enacted as follows:—

I. The Madras Irrigation and Canal Company may charge for the supply of water generally, except the supply for the purposes of Irrigation, a rate not exceeding the sum of one Rupee for four hundred cubic yards of water.

Rate which Company may charge for water supplied for purposes other than Irrigation

Commencement of Act.

II. This Act shall come into force on the first day of January 1866.

